

A History of Serbian Mediaeval Law

Srđan Šarkiћ



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A History of Serbian Mediaeval Law

Medieval Law and Its Practice

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Srđan Šarkić



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The Library of Congress Cataloging-in-Publication Data is available online at <https://catalog.loc.gov>
LC record available at <https://lccn.loc.gov/2023005457>

Typeface for the Latin, Greek, and Cyrillic scripts: “Brill”. See and download: brill.com/brill-typeface.

ISSN 1873-8176

ISBN 978-90-04-52936-6 (hardback)

ISBN 978-90-04-54385-0 (e-book)

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Preface

This book has been designed as a study guide to Serbian mediaeval law, which has been practically unknown outside of the Serbo-Croatian speaking area. With the exception of the Law Code of Stefan Dušan, which has been translated into most major world languages, such as English, French, German, Russian and Italian, the other sources have remained out of reach of most scholars' attention. The majority of studies concerning Serbian mediaeval law have also been written in Serbian (or Serbo-Croatian) language. However, we also have just one book in Serbian that treats the complete matter of Serbian mediaeval law. This is the monograph of the former professor of Belgrade University, in the Faculty of Law, Teodor Taranovski,¹ under the title *History of Serbian Law in Nemanjić's State* (*Историја српског права у немањихкој држави*), (Belgrade 1931–1935; second edition Belgrade 1996). Although this excellent book represents an invaluable study guide for anyone who wants to make acquaintance with Serbian mediaeval law, some of the author's conclusions seem to be unacceptable today. Naturally, a lot of works have been written on the subject between 1935 and today.

I hope that this book might be useful for everyone who has interest in the history of the Middle Ages, especially Serbian and Byzantine legal history, but who cannot read literature in the Serbo-Croatian language.

1 Serbian Cyrillic *Теодор Тарановски*; Russian *Фёдор Васильевич Тарановский*; 12/24 May 1875–1823 January 1936. Taranovski was born in Plonsk (Polish *Płońsk*, Russian *Плоньск*), at that time in Russia, today in Poland, to a Russian father and Polish mother. He went to school in Warsaw (Warszawa) and studied and graduated from the Russian Law Faculty in Warsaw. He spent several years in Germany and France, where he studied legal history. Taranovski's University career started in 1903 in Warsaw. Before coming to the Kingdom of Serbs, Croats and Slovenes (Yugoslavia), he taught at the Universities of Yaroslavl (Ярославль), Yuryev (Юрьев, today Tartu, ex Dorpat in Estonia) and Saint Petersburg (Санкт Петербург). He left Russia in January 1919, and arrived in Belgrade in March 1920. Already in April 1920 he was appointed Professor of History of the Slavonic Laws at the Faculty of Law in Belgrade, where he taught until his death in 1936. On his life and career, see J. Danilović, "Doprinos T. Taranovskog srpskoj pravnoj istoriografiji" ["Contribution of T. Taranovski to Serbian Legal Historiography"], preface to the second edition of T. Taranovski's *Istorija srpskog prava u nemanjićkoj državi* (Belgrade 1996), pp. 7–18.

Abbreviations

AASJE (ААСЈЕ)	Arhiv za arbanasku starinu, jezik i etnografiju (Архив за арбанаску старину, језик и етнографију)
APDN (АПДН)	Arhiv za pravne i društvene nauke (Архив за правне и друштвене науке)
APFB (АПФБ)	Anali Pravnog fakulteta u Beogradu (Анали Правног факултета у Београду)
ASPh	Archiv für slawische Philologie
BONNAE	Corpus Scriptorum Historiae Byzantinae, Bonn 1828–1878 (Bonn Corpus)
BZ	Byzantinische Zeitschrift
DOP	Dumbarton Oaks Papers
FBR	Forschungen zur byzantinischen Rechts-geschichte
Glas SANU (Глас САНУ)	Glas Srpske Akademije Nauka i Umetnosti (Глас Српске Академије Наука и Уметности)
Glas SKA (Глас СКА)	Glas Srpske Kraljevske Akademije (Глас Српске Краљевске Академије)
Glasnik DSS (Гласник ДСС)	Glasnik Društva Srpske Slovesnosti (Гласник Друштва Српске Словесности)
Glasnik SND (Гласник СНД)	Glasnik Skopskog Naučnog Društva (Гласник Скопског Научног Друштва)
Glasnik SUD (Гласник СУД)	Glasnik Srpskog Učenog Društva (Гласник Српског Ученог Друштва)
HZ (ХЗ)	Hilendarski zbornik (Хиландарски зборник)
IČ (ИЧ)	Istorijski časopis (Историјски часопис)
IG (ИГ)	Istorijski glasnik (Историјски гласник)
ISN (ИСН)	Istorija srpskog naroda (Историја српског народа)
JİČ	Jugoslovenski istorijski časopis
КЈР (КЈП)	Klasici jugoslovenskog prava (Класици југословенског права)
LSSV	Leksikon srpskog srednjeg veka [Lexicon of the Serbian Middle Ages], ed. S. Ćirković and R. Mihaljčić. Belgrade 1999
МНЈSM	Monumenta historico-juridica Slavorum Meridionalium

ODB	The Oxford Dictionary of Byzantium, editor in chief A. Kazhdan. New York/Oxford 1991.
PG	Patrologiae Cursus Completus, Series Graeca, éd. Migne, J.P., Paris 1857–1866.
PKJIF (ПКЈИФ)	Prilozi za književnost, jezik, istoriju i folklor (Прилози за књижевност, језик, историју и фолклор)
Rad JAZU	Rad Jugoslavenske Akademije Znanosti i Umetnosti
REB	Revue des études byzantines
Spomenik SKA (Споменик СКА)	Spomenik Srpske Kraljevske Akademije (Споменик Српске Краљевске Академије)
Spomenik SANU (Споменик САНУ)	Spomenik Srpske Akademije Nauka i Umetnosti (Споменик Српске Академије Наука и Уметности)
SSK (ССК)	Stara srpska književnost (Стара српска књижевност)
SSA (ССА)	Stari Srpski Arhiv (Стари Српски Архив)
SZ (СЗ)	Svetosavski zbornik (Светосавски зборник)
VIINJ (ФВНРЈС, ВИИНЈ)	Vizantijski izvori za istoriju naroda Jugoslavije (Fontes Byzantini Historiam Populorum Jugoslaviae Spectantes, Византијски извори за историју народа Југославије)
VV (ВВ)	Vizantiyskiy vremenik (Византийский вѣстник)
ZFFB (ЗФФБ)	Zbornik Filozofskog fakulteta u Beogradu (Зборник Филозофског факултета у Београду)
ZMSKS (ЗМСКС)	Zbornik Matice srpske za klasične studije (Зборник Матице српске за класичне студије)
ZRPFNS (ЗРПФНС)	Zbornik radova Pravnog fakulteta u Novom Sadu (Зборник Радова Правног факултета у Новом Саду)
ZRVI (ЗРВИ)	Zbornik radova Vizantološkog instituta (Зборник радова Византолошког института)
ZS-SR	Zeitschrift der Savigny-Stiftung für Rechtsgeschichte

PART 1

Background and Sources



Historical Background

The Serbs (Serbian Cyrillic *Срби*, romanized *Srbi*) are a South Slavic ethnic group and nation native to the Balkans (mediaeval Αἴμος, Ottoman Turkish *Balqan*, meaning “thickly wooded mountain”) in southeastern Europe. According to the information of Byzantine Emperor and writer Constantine VII Porphyrogenetos (Πορφυρογέννητος), Serbs (Σέρβοι, Σέρβιοι)¹ settled in the Balkans around 630 A.D., during the reign of the Emperor Herakleios (Ἡράκλειος).² Very little detail is known about the Serbs until the end of the 8th century, when the first Princes—Višeslav (Βοϊσέσθλαβος, Вишеслав), Radoslav (Ῥοδόσθλαβος, Радослав) and Prosigoj (Προσηγόης, Просигοј)—were mentioned by the same author. Their names are the only thing we know about them. In the middle of the 9th century, Prince Vlastimir (Βλαστίμηρος, Властимир) appeared. During Vlastimir’s rule, Presiam (Πρεσίαμ) of Bulgaria (836–852) unsuccessfully attacked the Serbs. Vlastimir’s sons and grandsons fought each other for power, using the support of mighty neighbours, Byzantium, Bulgaria and Croatia. Around 927, Časlav Klonimirović (Τζεέσθλαβος Κλονίμηρος, Часлав Клонимировић) came to power. He escaped from Bulgaria, where he had been born, and gained the assistance of Byzantine Emperor Romanos I Lekapenos (Ῥωμανός Α' Λεκαπηνός, 920–944) by promising to be an imperial vassal, rallied the Serbs living in Croatia and Bulgaria, and created a powerful State rivaling Bulgaria. However, after 950 traces of Serbian rulers completely disappear from the sources. At the beginning of the 11th century the centre of the Serbian State moved from Raška (Latin *Rassia* or *Raxia*, Serbian Cyrillic *Рашка*, region in the south of Serbia) to Diokleia (Дукља, Διόκλεια), which later became known as Zeta (Зета, Зέντα, modern Montenegro). The sources mention Prince Jovan (John) Vladimir (Βλαδιμηρός, Јован Владимир, died in 1016), whose personality became the object of legends and romantic stories, and he would later be celebrated as a saint in the Greek Orthodox Church. Struggles

1 *Serboi*, a term that first appears in the *Geography* of Ptolemy to designate a tribe dwelling in Sarmatia, probably on the Lower Volga. The name reappears, in the form *Serbloi*, in Constantine VII Porphyrogenetos and in Theophanes Continuatus, usually in the same context as the Croatians, Zachlumians, and other peoples of Panonia and Dalmatia. See “Serboi”, in *ODB*, pp. 1875–1876.

2 Constantine Porphyrogenetos, *De administrando imperio*, cap. 29–36, ed. Gy. Moravcsik and R.J.H. Jenkins (Budapest 1949; new edition Washington D.C. 1967), pp. 122–164.

for the independence of Dioklea (Duklja) from Byzantium began in about 1040. Exploiting the confusion within Byzantium, provoked by the rising of the Slavs from Macedonia under Petar Deljan (Ὁδελέανος, Петар Делџан), the Prince of Duklja Stefan Vojislav (Βοϊσθλάβος Στέφανος, Стефан Војислав, c.1040–c.1052) succeeded in throwing off Byzantine power. In further battles Vojislav asked the Papacy for support, requiring the royal title for himself and an independent archbishopric for Duklja. His son and successor Michael (Μιχαήλ, Mihajlo, Михајло, c.1052–c.1081) made his Principality stronger, helping the new rising of the Slavs in Macedonia under George Voitech (Γεώργιος ὁ Βοϊτάχος, Đorđe Vojteh, Ђорђе Војтех, 1072–1073), and in 1077 he obtained the royal crown from the Pope Gregory VII (Hildebrand, Pope from 1073–1085). Mihajlo's son Constantine Bodin (Βοδίνος, Бодин, c.1081–c.1101) changed the policy of his precursors and restored the good relationship with Byzantium. His greatest success was the foundation of the Archbishopric of Bar that had the jurisdiction over the whole of Duklja (1089).³ After the death of Constantine Bodin, the Kingdom of Duklja split, with the leading role among the Serbian lands taken by the rulers of Raška with the title of *župan*.⁴ Byzantine Princess Anna Komnena (Ἄννα Κομνηνή), in her famous book *The Alexiad* (Ἀλεξιάς, books VII and IX), mentioned Bolkan (Βολκάνος, Вукан, c.1083–1114), who fought against her father, the Emperor Alexios. The chronology of the later *župans* is not certain, but before Nemanja's arrival to the throne the sources mention the names of Uroš I (Οὐρέσις, Урош), Uroš II, Desa (Δέσε, Деса) and Tihomir (Τιχομιρ, Nemanja's brother).

The arrival to power of Stefan Nemanja (Νεεμαν Στέφανος, Стефан Немања) in 1168 was the beginning of the political independence of the Serbian mediaeval State. Nemanja was a founder of a dynasty which ruled over Serbia for more than two centuries. During Nemanja's reign the feudal system was introduced in Serbia and the power and reputation of the Church increased.

After victory over his brother Tihomir, Nemanja took the title of Great *Župan* (1168) and ruled as a vassal of Byzantine Emperor Manuel Comnenos (Μανουήλ Κομνηνός) until 1180. The death of the powerful Byzantine Emperor made the independence of Serbia possible. And that fact caused new struggles with Byzantium. After the battle of the River Morava (Μοράβα, Морáβος) in 1190, in which Nemanja was beaten, a peace treaty was concluded and confirmed by the marriage of Stefan (Στέφανος τοῦ Νεεμάν), Nemanja's second son, to the Byz-

3 Bar (Serbian Cyrillic *Бар*, Italian *Antivari*, Albanian *Tivar*) is a coastal town and seaport in southern Montenegro.

4 *Župan* was the ruler of *župa*, the Old Slavonic name for the counties. On *župa* see Part Three.

antine Princess Eudokia (Εὐδοκία), daughter of Alexios Angelos (Ἀγγελος), the Emperor's brother and later an emperor himself (1195–1203). Beside struggles for independence, Nemanja concluded a treaty with the city of Dubrovnik (Serbian Cyrillic *Дубровник*, Latin *Ragusium*, Greek *Ῥαγούσιον*, Italian *Ragusa*) which enabled Ragusan merchants to purchase goods in Serbia. He also fought vigorously against the Bogomilian heresy, that penetrated into Serbia from Macedonia and Bulgaria.

In 1196, Nemanja withdrew from power, leaving the throne to his second son Stefan, son-in-law to the now-Emperor Alexios III Angelos. Nemanja's eldest son Vukan (Вукан) became the ruler in Zeta (Diokleia or Duklja), but dissatisfied with this lesser inheritance, he overthrew his brother in 1202 with the help of the Hungarians. Vukan's reign lasted only a few years; in 1204 or 1205, supported by the Bulgarians, Stefan came back to the throne. Stefan was an intelligent ruler who governed over the State under very complicated circumstances in the Balkans, provoked by the crusade's conquest of Constantinople (1204) and the splitting of Byzantium into several States. Leaving the policy of friendship with Byzantium, he turned to the mighty Republic of Venice. Through the support of the Doge, he obtained in 1217 the royal crown from Pope Honorius III (Ὁνώριος, Pope from 1216–1227) and became the first Serbian King (so-called "Prvovenčani", "First Crowned"). During the reign of Stefan Nemanjić, his younger brother Rastko (Растко, monk from 1191, under the monastic name Sabba, Сава) founded the autocephalous Serbian Church (1219) and became its first archbishop (ἀρχιεπίσκοπος).

The sons and successors of Stefan Nemanjić, Stefan Radoslav (Стефан Радослав, Στέφανος Δούκας in Greek texts, 1228–1234) and Stefan Vladislav (Стефан Владислав, 1234–1243) were not particularly notable rulers. Their short reigns were overshadowed by the strong influence of their mighty neighbours: the Emperor from Thessaloniki Theodore I Angelos (Θεόδωρος Ἀγγελος, father-in-law of Radoslav, 1215–1230) and Bulgarian Emperor John II Assen (Bulgarian Cyrillic Иван Асен, father-in-law of Vladislav, 1218–1241). A new political and economical rise of the Serbian State began under the reign of Stefan's youngest son, Uroš (Οὐρέσις, Урош, 1243–1276). Invited by the King, German miners (so-called Sasi) came to Serbia and started the exploitation of metals. Uroš was overthrown by his first son Dragutin (Драгутин, 1276–1316), who was forced to share the throne in 1282 with his brother Milutin (Милутин, Μηλωτινος, 1282–1321). Dragutin remained in the northern part of Serbia, while Milutin ruled in the south. From the beginning of his reign Milutin initiated wars against the recently restored Byzantine Empire, conquering territories. The fact that two Kings existed in Serbia caused a civil war between the brothers. The majority of Serbian lords (*vlastela*) stood on Dragutin's side, but with strong support

from the Church, Milutin beat his brother, and after Dragutin's death in 1316 he remained the only King.

Milutin's successor was his son Stefan Uroš, called Dečanski (after his foundation, the monastery Dečani),⁵ who had to fight with Dragutin's son Vladislav and later with his half-brother Constantine. According to a treaty from 1282, Dragutin's sons should have succeeded their uncle. Stefan Dečanski suppressed the pretenders to the throne, but the mighty lords were not satisfied with his peaceful policy, and they brought his son Stefan Dušan (Στέφανος, Стефан Душан) to power (1331–1355). The reign of Stefan Dušan represents the pinnacle of the development of the Serbian mediaeval State. Using a civil war in Byzantium between Emperor Jonh v Palaiologos (Παλαιολόγος, 1341–1391) and the usurper John VI Cantacouzenos (Καντακουζηνός, 1347–1354), Dušan conquered vast lands in Greece and doubled the territory of Serbia. As he became one of the most powerful monarchs in Europe, he emphasized his pretensions on the imperial crown. In 1345 he raised the Archbishop of Serbia to the rank of Patriarch, and a year later he took the imperial dignity (Tsar), claiming to have replaced the Empire ruled from Constantinople with his own Empire. The whole organization of power in Dušan's Empire was arranged according to Byzantine models, and in 1349 he proclaimed the first part of his famous Law Code. Dušan's son and successor Uroš (1355–1371) was not able to stop the independent rules and mutual struggles of mighty lords, that made Turkish conquests easier. During the life of Emperor Uroš, the brothers Mrnjavčević (Мрњавчевић), Vukašin (Κράλη, Вукашин) and Uglješa (Οὐγγλέςης, Угљеша), who governed over Macedonia, organized separately the raid against the Turks, which ended in 1371 with a disastrous defeat on the River Maritsa (Bulgarian and Serbian Cyrillic *Марица*, Greek Ἑβρος, Latin *Hebrus*, Turkish *Meriç*), near Černomen (Черномен, Greek Ορμένιο) in Greek Thrace. The Emperor Uroš died in the same year and left no successor. The independent nobles did not try to organize common resistance against the Turks. The most powerful among them, Prince Lazar (Ἐλεάζαρος, Лазар), opposed the Turks, but was killed in 1389 in a famous battle at Kosovo field (Κοσοβο поле, Περίον Κόσοβον, "Field of the Blackbird", a valley in southern Serbia between Priština and the Laba River), as was the Turkish Sultan Murad I (Greek Μουράτ, Ἀμουράτης, 1362–1389). Stefan Lazarević, the son of Lazar (Στεφάνεω τοῦ Ἐλεαζάρου, Стефан Лазаревић), was obliged to become the vassal of the Sultan Bayazid and to participate together with his lord in the battle of Angora (Ankyra, Ἀγκυρα, modern

5 The monastery of Dečani (Serbian Cyrillic *Дечани*, Albanian *Deçanit*) is located by the Dečanska Bistritza (Дечанска Бистрица) river gorge at the foot of the Prokletije Mountains in the region of Metohija, about 2 km from the town of Dečani (in Kosovo).

Ankara) against the Mongols (1402). After Turkish defeat to the Mongols, Stefan Lazarević got the title of Despot from the Byzantine Emperor John VII Palaiologos (in the name of his uncle Emperor Manuel II, who was at that time absent from Constantinople) and soon after that became the vassal of the Hungarian King Sigismund (Zsigmond, 1387–1437). Although Stefan Lazarević was at first a Turkish and then a Hungarian vassal, Serbia had a vast territory during his reign. The economy grew, and the monastery of Resava (Манасија, Манасија) became an important centre of art and science. Stefan Lazarević was succeeded by his nephew Đurađ Branković (Γεώργιος, Ђурађ Бранковић, 1427–1456), who despite his abilities as a statesman could not stop the Turkish conquest. After the short reign of his son Lazar (Лазар) Branković (1456–1458) Serbia lost its independence: the last capital of the State, the city of Smederevo,⁶ was conquered by the Turks in 1459.⁷

6 Smederevo (Serbian Cyrillic Смедерево, Latin, Italian, Romanian and Greek *Semendria*, Hungarian *Szendrő* or *Vég-Szendrő*, Turkish *Semendire*) is a city in eastern Serbia on the right bank of the Danube, about 45 km downstream of Belgrade.

7 On Mediaeval Serbian history, see K. Jireček, *Geschichte der Serben* (Gotha 1911), and the Serbian translation by J. Radonić, *Istorija Srba* [History of the Serbs], vol. I (Belgrade 1952), and the third edition (1978), which contains the works for further readings, done by R. Mihaljčić. See also *Istorija srpskog naroda* [A History of the Serbian People], by a group of authors, vol. I (from the oldest times till 1371) (Belgrade 1981) and vol. II (1371–1537) (Belgrade 1982); S. Ćirković, *La Serbie au Moyen Age* (Paris 1992) and *I Serbi nel medio evo* (Milan 1992). Cf. also S. Ćirković, V. Dedijer, I. Božić, and M. Ekmečić, *History of Yugoslavia* (New York 1974).

Sources

1 Legal Sources

1.1 *Before the 12th Century*

The oldest surviving Serbian legal document is a charter presented to the monastery of Hilandar (Χελανδάριον)¹ in 1198 by the founder of the Serbian dynasty, Stefan Nemanja. Whether there were some other written sources before the 12th century is debatable. The oldest Slavonic historical source, the so-called *Letopis popa Dukljanina* (*Annals of the Priest from Diokleia*), in Chapter IX says that King Svetopelek (otherwise unknown in South-Slavonic history) convoked his people in order to define the borders of his Kingdom. According to the anonymous author of the *Annals* (*Chronicle*) the assembly lasted twelve days and the different questions were discussed in the presence of Pope Stephen's (Στέφανος, "crown", "wreath")² legates and the delegates of the Byzantine Emperor Michael (Μιχαήλ) III (842–867). Finally "a lot of laws and good customs were instituted [by the King]. Those who want to know more should read the Slavonic Book called Methodius, where all the good things instituted by the very good King can be found".³ The expression "the Slavonic Book" and "Methodius" have given rise to many hypotheses. Some scholars think that this book represents a statute which established the borders between the counties. Another hypothesis is that this text is a collection of different documents. There is also the opinion that the priest from Diokleia, by the term "Methodius", means the famous Byzantine *Nomokanon in 50 Titles*, translated

1 Serbian monastery on Mount Athos, located near Esphigmenou, 2 km inland from the north-eastern coast of the peninsula. Originally a Greek foundation, Hilandar may have been established in the late 10th century by George Chelandarios ("the Boatman"); by 1015 it was deserted, but in 1198–1199 the monastery was restored as a Serbian *koinobion* (κοινόβιον, lit. "common life") by Stefan Nemanja.

2 In the 9th century, when the assembly probably was maintained, there were three Popes with the names of Stephen: Stephen IV (816–817), Stephen V (885–894) and Stephen VI (896–897). It is not clear which the author is referring to.

3 The Slavonic original of the *Annals of the Priest of Diokleia* did not survive. We dispose today only with a Latin translation, made by the author himself, on the demands of his colleagues, the priests of the Archbishopric of Bar. The Latin text runs as follows: *Multas leges at bonos mores instituit, quos qui velit agnoscere, librum Sclavorum qui dicitur "Methodius" legat, ibi reperiet qualia bona instituit rex benignissimus. Letopis popa Dukljanina*, ed. F. Šišić (Belgrade-Zagreb 1928), p. 308, and *Letopis popa Dukljanina*, ed. V. Mošin (Zagreb 1950), p. 56.

into the Slavonic language by Archbishop and missionary to the Slavs Methodius (Greek Μεθόδιος, Old Slavonic МеѠѠдіи, c.815–6 April 885) himself.⁴ This theory considers *The Slavonic Book* as the first Serbian law or legal miscellany, composed of Roman laws (*leges*) and customs (*boni mores*), like the legal collections in the Occidental mediaeval States, called *Leges Romana Barbarorum*.⁵

It is impossible to say anything more precise about the Slavonic Book called Methodius, because this text has not survived.⁶ Also, the *Annals of the Priest from Diokleia* is a very unreliable source: its author, an anonymous priest from Bar, had a very poor education. His knowledge of historical facts was very often confused with untrustworthy tales and legends.

1.2 Charters

Before the proclamation of the Law Code of Stefan Dušan in 1349, charters were the most important legal documents in Serbia. According to their contents, most charters were donations, by which the monarch gave land and privileges, either to the Church and monasteries, or to nobles or cities. The great majority of the surviving charters in mediaeval Serbia were those granted to monasteries (165), while only a few survive that were given to the nobles or cities. Until the reign of Stefan Dušan, the Serbian Kings wrote their charters in the Old Serbian language, and from the 14th century in Greek as well.⁷

4 See *Letopis*, ed. Šišić, pp. 126–136.

5 N. Radojčić, “Proslava šestotinitne godišnjice Dušanova zakonika” [“Celebration of Six Hundred Year Anniversary of Dušan’s Law Code”], 15 and 16 December 1949, *SANU* (Belgrade 1949), p. 3.

6 See M. Petrak, “Liber Methodius of Presbyter Diocleas and the Nomocanon of Saint Methodius, Following the Traces of Alexander Soloviev”, in *125 godina od rođenja Aleksandra Vasiljeviča Solovjeva* [125 Years from the Birth of Aleksandar Vasiljevič Solovjev] (Belgrade 2016), pp. 139–153.

7 The most important collection of charters are those edited by F. Miklosich, *Monumenta serbica spectantia historiam Serbiae, Bosnae, Ragusii* (Vienna 1858); S. Novaković, *Zakonski spomenici srpskih država srednjega veka* [Legal Documents of Serbian States of Middle Ages] (Belgrade 1912, reprint Belgrade 2005); A. Solovjev, *Odabrani spomenici srpskog prava* [Selected Documents of Serbian Law] (Belgrade 1926); Lj. Stojanović, *Stare srpske povelje i pisma* [Old Serbian Charters and Letters], 1. 1 (Belgrade–Sremski Karlovci 1929); 1. 2 (Belgrade–Sremski Karlovci 1934) (reprint Belgrade 2006); A. Solovjev and V. Mošin, *Grčke povelje srpskih vladara—Diplomata graeca regum et imperatorum Serviae* [Greek Charters of Serbian Monarchs] (Belgrade 1936, Variorum reprints, London 1978); T. Živković, S. Bojanin, and V. Petrović, *Selected Charters of Serbian Rulers (XII–XV Century) Relating to the Territory of Kosovo and Metohia 1*, ed. Centre for Studies of Byzantine Civilization (Athens 2000) (with a translation in English); V. Mošin, S. Ćirković, and D. Sindik, *Zbornik srednjovekovnih ćirilićkih povelja i pisma Srbije, Bosne i Dubrovnika, knjiga 1, 1186–1321* [Miscellany of Mediaeval Cyrillic Charters and Letters from Serbia, Bosnia and Dubrovnik, book 1, 1186–1321] (Belgrade 2011). Since 2002,

The oldest surviving Serbian charter was presented to the monastery of Hilandar in 1198 by Stefan Nemanja (Стефан Немања) and his son Sabba (Сава). The founder of the Serbian dynasty promulgated this charter after his withdrawal from the throne (when he became a monk and took the name Simeon). The charter contains a very important introduction (*arenga*⁸ or *prooimion*, προοίμιον, a rhetorical introduction with philosophical and political overtones), which defines the Serbian mediaeval ideology as being in accordance with the Byzantine system of a hierarchical world order. The other provisions confirm that in the 12th century it was forbidden to the serfs (*meropsi*) to live off the land of their lords.⁹

The most important legal acts from the time of Stefan Nemanjić (so-called “Prvovenčani”, “First Crowned”) are two charters promulgated in 1219–1220 and 1221–1224 to the monastery of Žiča (Жича),¹⁰ which became the seat of the autocephalous Serbian Archbishopric. The King gave the monastery fifty-seven villages, eight mountains for pasture with 217 shepherd families and a large number of serfs. Charters contain the provisions on the jurisdiction of the Church, define different fines depending on social position, and for the first time introduce regulations for marriage and family law.¹¹

Faculties of Philosophy from Belgrade, Eastern Sarajevo and Banja Luka have started the review *Stari srpski arhiv* [Old Serbian Archives; henceforth SSA], which publishes new editions of Serbian and Bosnian charters (published volumes 1–19, 2002–2016). The best studies concerning Serbian diplomatics are the series of articles by S. Stanojević, “Studije o srpskoj diplomaciji” [“Studies on Serbian Diplomacy”], *Glas sKa*, sv. 90 (1912), pp. 68–113; sv. 92 (1913), pp. 110–209; sv. 94 (1914), pp. 192–262; sv. 96 (1920), pp. 1–74; sv. 100 (1922), pp. 1–48; sv. 106 (1923), pp. 1–96; sv. 110 (1924), pp. 1–25; sv. 132 (1928), pp. 1–57; sv. 156 (1933), pp. 41–75; sv. 157 (1933), pp. 153–249; sv. 161 (1934), pp. 1–53; sv. 169 (1935), pp. 1–120.

8 A mediaeval Latin word; Italian *aringa*, French *harangue*, Spanish *arenga* = *oratio publica*, *declamatio*, *concio*.

9 Editions: Novaković, *Zakonski spomenici*, pp. 384–385; Solovjev, *Odabrani spomenici*, pp. 11–14; V. Ćorović, *Spisi Svetog Save* [Scriptures of Saint Sabba] (Belgrade–Sremski Karlovci 1928), p. 1; Đ. Trifunović, V. Bjelogrić, and I. Brajović, “Hilandarska osnivačka povelja sv. Simeona i sv. Save” [“St. Simeon’s and St. Sabba’s Founding Charter Presented to the Monastery of Hilandar”], in *Osam vekova Studenice* [Eight Centuries of Monastery Studenica] (Belgrade 1986), pp. 49–60; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 67–69.

10 Near the city of Kraljevo (Serbian Cyrillic Краљево) in central Serbia.

11 Editions: Novaković, *Zakonski spomenici*, pp. 571–575; Solovjev, *Odabrani spomenici*, pp. 1–23; *Stefan Prvovenčani, Sabrana dela* [Stefan the First Crowned, Complete Works], translated and edited by Lj. Juhas-Georgijevska and T. Jovanović (Belgrade 1999, reprint Belgrade—Kraljevo 2017), pp. 110–123; Živković, Bojanin, and Petrović, *Selected Charters*, pp. 36–44 (with English translation); Mošin, Ćirković, and Sindik, *Zbornik*, pp. 89–92 and 93–95. On this charter see the recent work by N. Kršljanin, “Kralj kao zaštitnik crkve: pravna analiza Žičkih povelja Stefana Prvovenčanog” [“The King as Protector of the Church: A Legal Analysis of the Žiča Charters of Stefan the First Crowned”], in *Kraljevstvo*

The oldest Serbian charter that regulates the position of the dependent inhabitants was given to the monastery of the Holy Virgin in Bistritza (Бистрица), by King Vladislav, between 1234 and 1243.¹²

King Milutin was the greatest donator to the Church among all the Serbian Princes. He built or reconstructed about forty churches and monasteries and issued numerous charters. Three are the most important for legal history: one given to the monastery of Saint George near Skoplje (1299/1300); a second given to the monastery of Saint Stephen in Banjska (1314/1316); and a third given to the monastery of Gračanitz near Priština (1315 or 1321).¹³

The charter given to the Saint George's monastery is one of the most extensive Serbian charters. It regulates the legal status of the monastery's manor in Macedonia, the region where Byzantine influence was always strongest. Notwithstanding significant Byzantine influence, King Milutin granted independence to the manor, a situation more similar to that in Occidental European countries. In this charter we find the first mention of the fief (πρόνοια, *pronoia*), land held by military tenure.¹⁴

i Arhiepiskopija u srpskim i pomorskim zemljama Nemanjića [The Kingdom and the Archbishopric of the Serbian and Maritime Lands of the Nemanjić Dynasty] (Belgrade 2019), pp. 413–449.

- 12 Complete editions by Lj. Stojanović, *Stari srpski hrisovulji, akti, biografije, letopisi, tipici, pomenici, zapisi i dr.* [Old Serbian Chrysobulls, Acts, Biographies, Annales, Typikons, Inscriptions etc.], Spomenik SKA III (1890), pp. 6–7 and Mošin, Ćirković, and Sindik, *Zbornik*, pp. 165–167. Abridged edition by Novaković, *Zakonski spomenici*, pp. 589–591; Solovjev, *Odabrani spomenici*, pp. 27–31. On this charter see also V. Mošin, “Povelja kralja Vladislava Bogorodičinom manastiru u Bistrici i zlatne bule kralja Uroša” [“King Vladislav’s Charter to the Monastery of Holy Virgin in Bistritza and the Golden Bulls of King Uroš”], *Glasnik SND* 21 (1940), pp. 21–32 and R. Grujić, “Jedna docnija interpolacija u hrisovulji kralja Vladislava (1234–1243) za manastir Bistricu u Polimlju” [“A Later Interpolation in the Chrysobull of King Vladislav for the Monastery Bistritza in the Lim Valley”], *Glasnik SND* 13 (1934), pp. 200–203.
- 13 See V. Mošin, “Povelje kralja Milutina—diplomatička analiza” [“King Milutin’s Charters—Diplomatic Analysis”], *IČ* 8 (1971), pp. 53–86.
- 14 Complete editions: R. Grujić, “Tri hilendarske povelje” [“Three Charters for Hilandar”], *Zbornik za istoriju Južne Srbije i susednih oblasti, knj. 1* (1936), pp. 5–24; V. Mošin, L. Slaveva, and K. Ilievska, *Gramoti na manastiriot Sv. Georgi-Gorg Skopski, Gramota na kral Milutin* [Charters for the St. George’s Monastery near Skopje, Charter of the King Milutin], in *Spomenici na srednovekovnata i ponovata istorija na Makedonija*, 1 (Skopje 1975), pp. 205–238; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 315–328. Abridged editions: Novaković, *Zakonski spomenici*, pp. 608–621; Solovjev, *Odabrani spomenici*, pp. 69–82. See also R. Grujić, “Vlastelinstvo Svetoga Đorđa kod Skoplja od XI–XV veka” [“The Manor of the Saint George’s Monastery near Skopje from the 11th to 15th Centuries”], *Glasnik SND*, 1 (1925), pp. 45–77 and M. Blagojević, “O jednakim obavezama stanovništva u hrisovuljama manastira Sv.

In the charter given to the monastery of Saint Stephen in Banjska,¹⁵ we find special provisions under the title “Law of the Church People” (ЗАКОНЪ ЛЮДЕМЪ ЦРКОВНИМЪ) and “Law of the Vlachs” (ЗАКОНЪ ВЛАХОМЪ), regulating the position of Church serfs (the “Church People”) and dependent shepherds¹⁶ (Vlachs).¹⁷

Gračanitz’a (Gračanica, Serbian Cyrillic *Грачаница*, Albanian *Gračanicës*) charter survived as an inscription on the monastery’s wall.¹⁸ After listing of all goods, men and privileges granted to the monastery by the King, the charter contains a special chapter under the title “The Old Law of the Serbs” (ЗАКОНЪ СТАРИ СРБЛЕМЪ), regulating the duties of dependent peasants.¹⁹

Two charters of King Stefan Dečanski and his son King Dušan contributed to the monastery of Dečani (1330 and 1336) are of great importance. Containing a list of all serfs and their families (2432 houses and 40 villages) given to the Church, they enable us to study precisely family relationships.²⁰

Georgija kod Skoplja” [“On the Identical Duties of the Population in the Chrysobulls Issued for the St. George Monastery near Skopje”], *ZRVI* 46 (2009), pp. 149–165.

- 15 Banjska (Serbian Cyrillic *Банјска*, Albanian *Banjskës*) is a small village near Zvečan in Kosovo.
- 16 ‘Shepherd’ is how Vlachs has usually been translated into English, and this will be used through this book as convention, but Vlachs were not exclusively/solely keepers of sheep. Some kept cattle or both.
- 17 Complete editions: Lj. Kovačević, *Svetostefanska hrisovulja* [St Stephen’s Chrysobull], Spomenik SKA IV (Belgrade 1890); V. Jagić, *Svetostefanski hrisovulj kralja Stefana Uroša II Milutina* [St Stephen’s Chrysobull of King Stefan Uroš II Milutin] (Vienna 1890); Mošin, Ćirković, and Sindik, *Zbornik*, pp. 455–469; Đ. Trifunović, *Svetostefanska hrisovulja* [St Stephen Chrysobull], knjiga 1, *fototipija izvornog rukopisa* [First Book, A Phototypic Reproduction of the Original Manuscript], knjiga 11, *fototipija ranijih izdanja i prevod na savremeni srpski jezik* [Second Book, Phototypic Reproduction of Previous Editions, Followed by a Modern Serbian Translation] (Belgrade 2011). Abridged editions: Novaković, *Zakonski spomenici*, pp. 622–631; Solovjev, *Odabrani spomenici*, pp. 89–99. On the history of the monastery see S. Novaković, “Manastir Banjska, zadužbina kralja Milutina u srpskoj istoriji” [“Monastery of Banjska, Pious Endowment of King Milutin, in Serbian History”], *Glas SKA* 32 (1892), pp. 1–55.
- 18 The monastery is located in Gračanitz’a, a Serbian enclave near Lipljan, some 5 km from Priština. It is situated on the Kosovo field, on the left riverbank of Gračanka, a right tributary of the Sitniza River. The name is derived from Slavic *Gradac*, a toponym of fortified cities.
- 19 Complete editions: Solovjev, *Odabrani spomenici*, pp. 99–105; M. Pavlović, “Gračanička povelja” [“Gračanitz’a’s Charter”], *Glasnik SND* 3 (1928), pp. 105–141; B. Živković, *Gračanička povelja* [“Gračanitz’a’s Charter”], Sveti arhijerejski sinod Srpske pravoslavne crkve (Belgrade 1992); Živković, Bojanin, Petrović, *Selected Charters*, pp. 69–81 (with English translation); Mošin, Ćirković, and Sindik, *Zbornik*, pp. 499–503. Abridged edition: Novaković, *Zakonski spomenici*, pp. 633–637.
- 20 Complete edition by M. Milojević, *Dečanske hrisovulje* [Dečani Chrysobulls], *Glasnik SVD, drugo odelenje, knjiga XII* (Belgrade 1880). Diplomatic edition with a translation into the

The most important charter from the reign of Tsar Stefan Dušan was presented to his foundation, the monastery of Saint Archangels Michael and Gabriel near the city of Prizren²¹ in 1348. Among other provisions, the charter contains a chapter on the legal position of dependent peasants (“Law of the Serbs”) and shepherds (“Law of the Vlachs”).²²

The first surviving charter given to a nobleman is from the time of King Milutin: the monarch confirms (summer 1316) the old privileges of a noble family Žaretić (Lovretić), from the city of Bar.²³

Another important charter for legal history is that of Emperor Dušan confirming in 1350 a hereditary estate (*baština*, БАШТИНА) to the lesser lord (*vlastelić*) Ivanko Probištitović,²⁴ as well as two documents from the same ruler, granting some rights to his Greek courtier George Phokopoulos (Γεώργιος Φωκόπουλος) from 1346 and 1352.²⁵

There are two surviving charters to noblemen from the reign of Tsar Uroš: the first is from 1357, where the Emperor confirms to his sister Irene (Јерина, Είρήνη) the hereditary estate (*baština*) of her husband Preljub (Прелуб); by the second from 1363, he allows the headman (*čelnik*) Musa (Муса) the exchange

modern Serbian language by P. Ivić and M. Grković, *Dečanske hrisovulje* [Dečani Chrysobulls] (Novi Sad 1976). Abridged editions: Novaković, *Zakonski spomenici*, pp. 646–655; Solovjev, *Odabrani spomenici*, pp. 112–119.

21 Prizren (Serbian Cyrillic *Призрен*, Albanian *Prizreni*, Greek *Πρισδρίανα*) is a historic city located in Kosovo. The city has a population of around 178,000, making it the second largest town in Kosovo. The residents of Prizren are today mostly ethnic Albanians. Prizren is located on the banks of the River Bistritza (Бистрица), and on the slopes of the Šar Mountains (Шар Планина) in the southern part of Kosovo.

22 Complete editions: J. Šafarik, “Hrisovulja cara Stefana Dušana kojom osniva manastir Sv. Arhandela Mihajla i Gavрила u Prizrenu godine 1348” [“Emperor Stefan Dušan’s Chrysobull Founding the Monastery of St. Archangels Michael and Gabriel near City of Prizren in 1348”], *Grasnik DSS* 15 (1862), pp. 266–317; S. Mišić and T. Subotin-Golubović, *Svetoarhandelovska hrisovulja* [St. Archangel’s Crisoboule], (Belgrade 2003). Abridged editions: Novaković, *Zakonski spomenici*, pp. 682–701; Solovjev, *Odabrani spomenici*, pp. 135–142.

23 Editions: A. Solovjev, “Povelja kralja Milutina barskoj porodici Žaretića” [“King Milutin’s Charter to the Family Žaretić from the City of Bar”], *АΑΣJE*, knj. 111, 1–2 (1926), pp. 117–125; *Odabrani spomenici*, pp. 88–89; S. Božanić, “Povelja kralja Milutina barskoj porodici Žaretić, leto 1316” [“King Milutin’s Charter to the Family Žaretić from the City of Bar, Summer 1316”], *SSA* 6 (2007), pp. 11–17; Mošin, Čirković, and Sindik, *Zbornik*, pp. 451–452.

24 Editions: Solovjev, *Odabrani spomenici*, pp. 150–152; V. Aleksić, “Povelja vlasteliću Ivanku Probištitoviću, 28. maj 1350” [“Charter to Lesser Lord Ivanko Probištitović, 28 May 1350”], *SSA* 8 (2009), pp. 69–80. On the family Probištitović see A. Solovjev, “Sudbina jedne vlasteoske porodice iz srednjovekovne Srbije” [“Destiny of a Nobleman Family from Medieval Serbia”], *Starinar* 8–9 (1933/34), pp. 63–71.

25 Solovjev, and Mošin, *Diplomata graeca*, pp. 73–75 and 179–181.

of the city of Zvečan (Звечан)²⁶ with the county (*župa*) for the city of Brvenik (Брвеник)²⁷ with county.²⁸

From the 15th century the charter of Despot Đurađ Branković survives. Presented to the great headman (*veliki čelnik*, велики челник) Radič (Радич, 1428/1429), it confirms the gift of seventy villages as an hereditary estate.²⁹

A Latin translation of a charter issued in 1343 by King Dušan to the Albanian city of Kroja (modern Krujë) is the only surviving charter granted to towns.³⁰

1.3 *Treaties with Dubrovnik*

During the political independence of the Serbian mediaeval State (until 1459), its most important commercial partner was the small City Republic of Dubrovnik (Ragusa). Although the community of Dubrovnik recognized the supreme authority of Byzantium (until 1205), Venice (until 1358) and Hungary (until 1526), the Republic enjoyed a large amount of autonomy and could sign international treaties. Merchants from Dubrovnik had a great interest in maintaining good relations with Serbian rulers and increasing trade with Serbia and Bosnia. Therefore, the founder of the dynasty, Stefan Nemanja, signed the first treaty with Dubrovnik, and his example was followed by all Serbian monarchs. The treaties with Dubrovnik have become an important source of Serbian mediaeval law.³¹

26 Zvečan (Serbian Cyrillic Звечан, Albanian *Zveçani*) is a town and municipality located in the Mitrovitza District in Kosovo with a population of 16,650.

27 Brvenik (Брвеник) is today a small village in the municipality of Raška (South Serbia).

28 Editions: Novaković, *Zakonski spomenici*, pp. 312–314; Solovjev, *Odabrani spomenici*, pp. 166–167; M. Šuica, “Povelja cara Uroša o zameni poseda između kneza Vojislava i čelnika Muse” [“Charter of Exchange of Domains Between Prince Vojislav and Headman Musa, 15 July 1363”], *SSA* 2 (2003), pp. 143–166. On this county (*župa*) see A. Solovjev, “Jedna srpska župa za vreme carstva” (“One Serbian County from the Epoch of the Empire”), *Glasnik SND* 3 (1927), pp. 25–42.

29 Novaković, *Zakonski spomenici*, pp. 333–335; On the great headman Radič see S. Novaković, “Veliki čelnik Radič ili Oblačić Rade 1413–1435” (“The Great Headman Radič or Oblačić Rade 1413–1435”), *Glasnik SKA* 1 (1881), pp. 122–164.

30 Solovjev and Mošin, *Diplomata graeca*, pp. 310–321. Alfonso V, King of Aragon, confirmed on 19 April 1457 the privileges to the citizens of Kroja, referring to the charter of the Serbian King. Dušan's charter was signed *Stephanus fidelis in Christo crales Bugarorum*, but, as Solovjev and Mošin remark, the word *Bugarorum* must be an interpolation of the 15th-century copyist, as otherwise the signature matches completely other documents of Dušan.

31 See N. Porčić, *Dokumenti srpskih srednjovekovnih vladara u dubrovačkim zbirkama: doba Nemanjića* [Documents of Serbian Medieval Rulers in Dubrovnik Collections: The Nemanjić Period] (Belgrade 2017).

The first contract with Dubrovnik was a peace treaty concluded on 27 September 1186 between Stefan Nemanja and his brother Miroslav (Мирослав, Prince of Hum, modern Hercegovina) and the Republic of Dubrovnik. Although this document is a peace treaty, it contains provisions guaranteeing freedom of movement and trade to the Ragusans on the territory of Serbia.³²

In 1205 Dubrovnik was forced to recognize the supreme power of Venice, which did not tolerate the competition of Ragusan merchants on the sea. Trade with Serbia, which stood behind the walls of the city, became an imperative for the economic existence of the Republic. Because of this, the number of treaties with the Serbian Kings increased.

Stefan Nemanjić concluded three treaties with Dubrovnik: in 1205, 1215 and 1220. His first son, King Radoslav, did the same in 1234, and his brother King Vladislav did so in 1238 and 1240.³³ Starting with the reign of King Uroš, when mining began, the treaties with Dubrovnik became more frequent and more extensive. Uroš concluded treaties in 1252 and 1254, and his successors Dragutin and Milutin did so in 1276, 1281 (Dragutin), 1282, 1283, c.1289, 1301 and 1302 (Milutin).³⁴

In the 14th century, trade between Serbia and Dubrovnik came to its zenith. As a result, we have thirteen treaties concluded by Stefan Dečanski, Stefan Dušan and Stefan Uroš.³⁵ The most important of all these is Dušan's from 1349.

32 Editions: Novaković, *Zakonski spomenici*, pp. 132–133; Solovjev, *Odabrani spomenici*, pp. 3–4; V. Foretić, "Ugovor Dubrovnika sa srpskim velikim županom Stefanom Nemanjom i stara dubrovačka djedina" ["Dubrovnik's Treaty with Serbian Great Župan Stefan Nemanja and Old Ragusan Hereditary Estate"], *Rad JAZU*, knjiga 283 (Zagreb 1951), pp. 51–118; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 45–48.

33 Novaković, *Zakonski spomenici*, pp. 136–139; Solovjev, *Odabrani spomenici*, pp. 26–27; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 85–87, 129–130, 137–138.

34 Novaković, *Zakonski spomenici*, pp. 149–152, 154–158; Solovjev, *Odabrani spomenici*, pp. 83–85; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 211–214, 215–216, 235–236, 271–274, 275–276, 285–286, 289–290, 343–347.

35 Those are the treaty of Stefan Dečanski from 1326; Dušan's treaties from 1331, c.1334, 1345 and two in 1349; Uroš's treaties in 1356, two in 1357, 1360 and three in 1362. Editions: Novaković, *Zakonski spomenici*, pp. 163–164, 166–167, 169–172, 175–187; Stojanović, *Povelje i pisma*, 1, 1, pp. 59–64; N. Porčić, "Povelja kralja Stefana Dečanskog Dubrovčanima iz 1326 godine" ["Charter of King Stefan Dečanski to the Ragusans from 1326"], *SSA* 6 (2007), pp. 19–34; D. Ječmenica, "Povelja kralja Stefana Dušana Dubrovčanima o trgovini" ["Charter of King Stefan Dušan to the Ragusans on Trade"], *SSA* 10 (2011), pp. 17–28; D. Ječmenica, "Hrisovulja cara Stefana Dušana Dubrovčanima sa dva prateća akta, 20. septembar 1349" ["Chrysobull of Tsar Stefan Dušan to Ragusans with Two Following Documents, 20 September 1349"], *SSA* 11 (2012), pp. 33–58. Among those treaties the charter of the King Stefan Dečanski from 1 May 1330, issued to the Republic of Venice, should be mentioned. The King guaranties to the merchants of Venice the freedom of movement and trade in

It served as a model to all future treaties with Dubrovnik until the fall of the Serbian mediaeval State. According to the provisions of that treaty, the Tsar himself assumed the obligation to indemnify Ragusan merchants in case they were plundered on the territory of Serbia. Further on, it was forbidden to the Ragusans to transport weapons through Serbia to neighbouring countries. For disputes between Ragusans and Serbs, Serbian courts were to be used. Duties were to be paid on the market places, where the Ragusans sold their goods. In case of a shipwreck of any Ragusan or Venetian³⁶ ship at the Serbian shore, it was strictly forbidden to the Serbs to take anything from its cargo. In case of war between Serbia and Dubrovnik, the Ragusans had a term of six months to leave Serbia and return to Dubrovnik freely.

The treaties of Prince Lazar from 9 January 1387, Despot Stefan Lazarević from 2 December 1405 and Despot Đurađ Branković from 1428 and 1445 repeated the provisions of Dušan's document from 1349 in general.³⁷

The content of all those treaties are similar: the Serbian monarch gives the privilege of trade to the merchants of Dubrovnik in the form of a charter. Although the documents were always signed by both sides, the will of the Serbian rulers was decisive.³⁸

Serbia. Edited by Novaković, *Zakonski spomenici*, p. 262 and K. Mitrović, "Pismo kralja Stefana Uroša III mletačkom duždu Frančesku Dandolo" ("The Letter of King Stefan Uroš III to the Venetian Doge Francesco Dandolo"), *SSA* 15 (2016), pp. 9–18.

36 Although Venice was mentioned only once in this treaty, Novaković considered that the document was valid for the Republic of Venice as well, because the Ragusans were under their supreme authority and because the first deputy in the negotiations was the Venetian marquis Nicolaus Georgio (Novaković, *Zakonski spomenici*, p. 265; Ječmenica, *SSA* 11, pp. 34, 41, 47, 50, 51, 57). On the personality of Nicolaus Georgio (Никола Говурги) see S. Ćirković, "Povelja kralja Vukašina Dubrovniku kojom potvrđuje povelje ranijih srpskih vladara" ["Charter of King Vukašin to Ragusans Confirming the Charters of Previous Serbian Rulers"], *SSA* 4 (2005), pp. 170–171.

37 Novaković, *Zakonski spomenici*, pp. 200–203, 218–221, 231–236; A. Mladenović, *Povelje kneza Lazara* [Charters of Prince Lazar] (Belgrade 2003, second edition Belgrade 2015), pp. 192–193; A. Mladenović, *Povelje i pisma despota Stefana* [Charters and Letters of Despot Stefan] (Belgrade 2007), pp. 43–51; A. Veselinović, "Povelja despota Stefana Lazarevića Dubrovčanima" ["Charter of Despot Stefan Lazarević to Ragusans"] *SSA* 10 (2011), pp. 151–164. There is also a peace treaty of Stefan Lazarević with Venice (1423), confirming the freedom of trade to the merchants of Venice. Document written in Latin (Novaković, *Zakonski spomenici*, pp. 280–286).

38 See M. Kos, "Dubrovačko-srpski ugovori do sredine 13-og veka" ["Ragusan–Serbian Treaties until the Middle of the 13th Century"], *Glas SKA* 123 (1927), pp. 1–65 and M. Jasinski, "Ugovori srpskih vladara sa Dubrovnikom kao spomenici starog srpskog prava" ["Treaties of Serbian Rulers with Dubrovnik as the Sources of the Old Serbian Law"], *APDN* 25.9 (1930), pp. 169–178.

1.4 *Nomokanon (Νομοκάνον)*³⁹ or *Zakonopravilo (Ζακονοπρᾶβιλο) of Saint Sabba*

Serbian law from the early 13th century developed under the direct influence of Byzantine law. The first Byzantine legal miscellany that penetrated into Serbia, around 1219, was the *Nomokanon of Saint Sabba* or *Krmčija* (from Russian *Кормчая книга*, lit. *The Pilot's Book*). Although a large number of works have been written on the origin and the author of *Krmčija*,⁴⁰ many problems still remain: "The discussion is still going on and for a final solution one must wait until the whole of Sava's *Kormčaja* is published and submitted to the close scrutiny of philologists."⁴¹ Anyway, the majority of Serbian scholars think that the composer and translator of this *Nomokanon* was Sava Nemanjić (Saint Sabba) himself.⁴² On his way back from Nicaea (Νίκαια, modern *Iznik* in Turkey), where the Serbian Church got its autocephalous archbishopric, Sabba stopped in Thessaloniki, and it is here that he probably composed the famous *Nomokanon*.

The ecclesiastical rules of the *Krmčija* were taken from two Byzantine canonical collections, with canonist's glosses: the *Synopsis* (Σύνοψις κανόνων) of Stephen from Ephesos (Στέφανος ο Εφέσιος, beginning of the 6th century), with the interpretations of Alexios Aristenes (Ἀλέξιος Ἀριστηνός, c.1130)⁴³ and the *Syntagma of XIV Titles* (Σύνταγμα κανόνων εἰς 14 τίτλους), a work of an anonym-

39 Nomokanons are Byzantine compilations of secular laws (νόμοι) and ecclesiastical regulations (κανόνες, canons).

40 The list of works concerning *The Nomokanon of St Sabba* can be found in I. Žužek, *Kormčaja kniga*, Orientalia Christiana Analecta 168 (Rome 1964). See also T. Subotin-Golubović, "Nomokanon" (Ζακονοπρᾶβιλο), in *LSSV*, pp. 446–449.

41 Žužek, *Kormčaja kniga*, p. 35.

42 Especially after the research of S. Troicki: "Ko je preveo Krmčiju sa tumačenjima?" ["Who Translated the Krmčija with Interpretations?"], *Glas SANU* 193 (1949), pp. 119–142 and "Kako treba izdati Svetosavsku Krmčiju (Nomokanon sa tumačenjima)?" ["How to Edit St. Sabba's Krmčija (Nomokanon with Interpretations)"], *Spomenik SANU* 102 (Belgrade 1952), 4. The review of the different opinions on authorship of *Krmčija* was presented by D. Bogdanović in a paper at the International Scientific Meeting (Belgrade, December 1976) dedicated to the work and life of St. Sabba: "Krmčija Svetoga Save" ["St. Sabba's Krmčija"], *Međunarodni naučni skup Sava Nemanjić—Sveti Sava* (Belgrade 1979), pp. 91–99. See also M. Petrović, "Sveti Sava kao sastavljač i prevodilac Zakonopravila—srpskog Nomokanona" ["Saint Sava as the Compiler and Translator of the Zakonopravilo—Serbian Nomokanon"], *IC* 49 (2002), pp. 27–46. Cf. M. Petrović, *O Zakonopravilu ili Nomokanonu Svetoga Save, rasprave [On Zakonopravilo or Nomokanon by Saint Sava, Treaties]* (Belgrade 1990) and L. Burgmann, "Der Codex Vaticanus graecus 1167 und der serbische Nomokanon", *ZRVI* 34 (1995), pp. 91–107.

43 Under Emperor John II Komnenos (1118–1143), Aristenos wrote a commentary on the *Nomokanon* that probably antedated that of Zonaras. He fulfilled both ecclesiastical and secular functions.

ous author composed between 577 and 692, with the interpretations of John Zonaras (Ἰωάννης Ζωναράς, first half of the 12th century).⁴⁴ Among the Roman (Byzantine) laws (νόμοι), St Sabba's *Nomokanon* contains the whole *Procheiron* (Πρόχειρος Νόμος, *Handbook* or *The Law Ready at Hand*) of Basil I or maybe Leo VI (ΖΑΚΟΝΑ ΓΡΑΔΣΚΑΓΟ ΓΛΑΒΥ in the Serbian translation)⁴⁵ and a translation of eighty-seven titles of *Justinian's Novels* (*Collectio octoginta septem capitulorum*). The author of this collection of ecclesiastical law of civil origin, created before 565, was the Patriarch of Constantinople John Scholastikos (Ἰωάννης Σχολαστικός).⁴⁶

The *Nomokanon* (or *Zakonopravilo* in the Serbian translation) of St Sabba has no prototype in any Byzantine or Slavonic codex, and it retained its place within the Serbian legal system, being neither challenged nor abrogated.⁴⁷

44 Historian, canonist, and theologian, high-ranking official at the court of Alexios I, died after 1159? His chronicle, *Epitome historion*, encompasses history from the creation of the world to 1118. He also produced commentaries on the *Apostolic constitutions*, canons of councils, and Church fathers, as well as some hagiographical and homiletical works.

45 According to the researches of F.A. Biener, *Beiträge zur Revision des Justinianischen Codex* (Berlin 1833, reprint Aalen 1970), p. 225 and K.E. Zachariä von Lingenthal, *Ὁ Πρόχειρος Νόμος Imperatorum Basilii, Constantini et Leonis Procheiron* (Heidelberg 1837), p. LX, the *Procheiron* use to be dated to 870–879 (more precisely 872), but must be regarded as a revision of the *Epanagoge* ordered by Leo VI in 907. See A. Scminck, *Studien zu mittelbyzantinischen Rechtsbüchern, FBR*, vol. 13, ed. Dieter Simon (Frankfurt am Main 1968), pp. 62–107; S.N. Troianos, *Οι πηγές του Βυζαντινού δικαίου* (Athens—Komotini 1999, new edition 2011), pp. 176–181. Cf. N. Oikonomidès, “Leo VI’s Legislation of 907 Forbidding Fourth Marriages. An Interpolation in the Procheiros Nomos (IV, 25–27)”, *DOP* 30 (1976), pp. 173–193. Schminck’s dating of the *Procheiron* (907) was challenged by Th.E. van Bochove, *To Date and not to Date: On the Date and Status of Byzantine Law Books* (Groningen 1996), pp. 29–56, who upheld the traditional dating of the *Procheiron*. The most recent examination of the authorship and dating of the *Procheiron*, that of J. Signes Codoñer and F.J.A. Santos, “La introducción al derecho (eisagoge) del patriarcha Focio”, *Nueva Roma* 28 (2007), pp. 160–278, for the most part maintains the traditional dating (870–879), but the authors add that the *Procheiron* was revised after the death of Leo VI, during the second decade of the tenth century.

46 On Byzantine canon law collections see two chapters written by S.N. Troianos: “Byzantine Canon Law to 1100” and “Byzantine Canon Law from the Twelfth to the Fifteenth Centuries”, in *The History of Byzantine and Eastern Canon Law to 1500*, ed. W. Hartmann and K. Pennington (Washington D.C. 2012), pp. 115–169 and 170–214.

47 It is very strange that we still have no critical edition of *Krmčija*. The only edited fragment is the text from the *Procheiron* (*Zakon gradski*), based upon the transcript of Morača (Serbian Cyrillic *Морача*, monastery in Montenegro), done by N. Dučić, “Krmčija Moračka” [“Krmčija from Morača”], *Glasnik SUD* 11, odeljenje 8 (1877), pp. 34–134. In 1991 the photo-print reproduction of the *Ilovitsa* (Serbian Cyrillic *Иловица*, monastery in Montenegro)

1.5 Codification of Stefan Dušan

In the 14th century the Serbian monarchy became more powerful than the Byzantine, but the ideal of a world empire was still attractive to the Serbs. The system of the hierachical world order is still found,⁴⁸ but the desire of the Serbian Kings was to become Emperors themselves. This was realized in 1346, when King Dušan proclaimed himself *the true-believing Tsar and Autocrat of the Serbs and the Greeks*. Educated as a young man in Constantinople, Dušan knew very well that if his State pretended to become an Empire, it should have, *inter alia*, its own independent legislation. Accordingly he began preparations for his own law code immediately after the establishment of the Empire, following the examples of his model, the great Byzantine Emperors and legislators Justinian I, Basil I and Leo VI. In a charter of 1346, in which he announced his legislative programme, he said that the Emperor's task was to "make the laws that one should have" (закони поставити њакоже подобаетъ имети).⁴⁹ These laws are, without a doubt, laws of the type which Byzantine Emperors had, namely general legislation for the whole of the State's territory. In the social and political circumstances, the Serbian Emperor (Tsar) had to accept existing Graeco-Roman (Byzantine) law, though modified in accordance with Serbian custom. A completely independent codification of Serbian law, without any Graeco-Roman law, could not be produced, and therefore the Serbian lawyers created a special *Codex Tripartitus*, codifying both Serbian and Byzantine law. The Russian scholar Timofey Dmitrijevič Florinskiy (Тимофей Дмитриевич Флоринский) noticed this as long ago as 1888, pointing out that in the oldest manuscripts Dušan's Code is always accompanied by two other compilations of Byzantine law: the abbreviated (*Epitome*, Ἐπιτομή) *Syntagma*⁵⁰ of Matheas

Manuscript from 1262 appeared, edited and appendices written by M. Petrović, *Zakonopravilo ili Nomokanon Svetoga Save* [Zakonopravilo or the Nomokanon of Saint Sava], (Gornji Milanovac 1991). Translation into modern Serbian language by M. Petrović and Lj. Štavljanin-Đorđević, *Zakonopravilo Svetoga Save, knjiga I* [Nomokanon of Saint Sabba, Book I] (Belgrade 2005), contains the translation of chapters 1–47 (the whole text has 64 chapters).

48 See G. Ostrogorski, "The Byzantine Emperor and the Hierarchical World Order", *Slavonic and East European Review* 84 (1956), pp. 1–14.

49 S. Novaković, *Zakonik Stefana Dušana, cara srpskog 1349–1354* [The Code of Stephan Dušan, Serbian Tsar 1349–1354] (Belgrade 1898, reprint Belgrade 2004), p. 5; see also Serbian Academy's edition, vol. III, p. 430 (see Chapter 2, note 71).

50 *Syntagma* is a term used in patristic literature to designate any treatise or book, especially those that were scriptural, exegetic, or polemical in content. The term was extended to characterize some collections of canon law.

Blastares and the so-called “Justinian’s Law”.⁵¹ Dušan’s Law Code, in a narrow sense, is the third part of a larger Serbo-Graeco-Roman codification.⁵²

1.5.1 *The Syntagma* (ΣΙΝΤΑΓΜΑ, Σύνταγμα)

This was a nomokanonic miscellany put together in twenty-four titles (each title has a sign of one Greek alphabet letter) by the monk Matheas Blastares from Thessaloniki in 1335.⁵³ From the ecclesiastical side Matheas Blastares used *The Nomokanon of 14 Titles* (Νομοκάνονος εἰς 14 τίτλους) and the commentaries of John Zonaras and Theodore Balsamon.⁵⁴ From the civil side he used the *Ecloga* of Leo III⁵⁵ and the *Procheiron*, *Epanagoge/Eisagoge*, *Novels of Leo VI*, and *Basilika*, i.e. the legislation of the first two Emperors of the Macedonian dynasty, Basil I (867–886) and Leo VI (886–912), called the “Recleansing of the Ancient Laws” (ἀνακάθαρσις τῶν παλαιῶν νόμων).⁵⁶ The *Syntagma* came to be known in Serbia in two translations, a full version and an abridged one.⁵⁷ The

51 T. Florinskiy, *Pamyatniki zakonodatelnoi dyatelnosti Dušana Tsara Serbov i Grekov* [Records of Legislative Work of Dušan, Tsar of the Serbs and Greeks] (Kiev 1888).

52 S. Šarkić, “L’idée de Rome dans la pensée et dans l’action du Tsar Dušan”, *Idea giuridica e politica di Roma e personalità storiche I*, Da Roma alla Terza Roma, documenti e studi, Rome 1990, pp. 141–156.

53 For the problem of dating see C.G. Pitsakis, “De nouveau sur la date du ‘Syntagma’ de Matthieu Blastares”, *Byzantion* 51 (1981), pp. 638–639, who rejects the date of 1355 proposed by G.I. Theodoridis, in “Ο Ματθαῖος Βλάσταρης καὶ ἡ μονή του κυρ-Ισαάκ ἐν Θεσσαλονίκῃ”, *Byzantion* 40 (1970), pp. 437–459 and by I.P. Medvedev, “La date du Syntagma de Matthieu Blastares”, *Byzantion* 50 (1980), pp. 338–339.

54 Byzantine canonist, born in Constantinople between c.1130 and 1140, died after 1195. Balsamon occupied high positions in the Church hierarchy, and he became Patriarch of Antioch (although he remained in Constantinople).

55 *Ecloga* (Ἐκλογή τῶν νόμων, literally “Selection of the Laws”), compilation of Byzantine law in 18 chapters, issued in 726, or more probably 741, by Leo III Isaurian in his name and that of his son Constantine V. Though the *Ecloga* continued to be based on Roman law (editors took provisions from Justinian’s legislation), Leo revised it with a “correction towards greater humanity” (ἐπιδιόρθωσις εἰς τὸ φιλάνθρωπότερον) and on the basis of Christian principles.

56 Concerning the legal sources of Matheas Blastares see S.N. Troianos, “Περὶ τὰς νομικὰς πηγὰς τοῦ Ματθαίου Βλάσταρη”, *Επετηρίς Εταιρείας Βυζαντινῶν Σπουδῶν* 44 (1979–1980), pp. 305–329.

57 The full version was edited by S. Novaković, *Matije Vlastara Sintagmat* [Matheas Blastares’ Syntagma], (Belgrade 1907). See also S. Troicki, *Dopunski članci Vlastareve Sintagme* [Supplementary Articles of Blastares’ Syntagma] (Belgrade 1956). The author supplemented the edition of Novaković. Recently, the Syntagma has been translated into the modern Serbian language: Matija Vlastar, *Sintagma*, translated from Serboslavonic language by T. Subotin-Golubović (Belgrade 2013). The Greek text of the *Syntagma* was edited by Γ.Α. Πάλλης and Μ. Πότλης, *Ματθαίου τοῦ Βλασταρέως Σύνταγμα κατὰ στοιχεῖον* (Ἐν Ἀθῆ-

compilers of Dušan's codification radically abridged the earlier translation of the whole *Syntagma* from an original 303 chapters to 94. They had two reasons for so abbreviating the earlier text. The first was of a completely ideological character, as Matheas Blastares' *Syntagma* expresses the political hegemony of the Byzantine Empire on ecclesiastical as well as constitutional terms. Accepting the commentaries of Byzantine canonist Theodore Balsamon (Θεόδωρος Βαλσαμῶν), Matheas Blastares reflects the omnipotence of the Byzantine Emperor, his *dominium* both spiritual and political. He actually restricts the independence of the autocephalous Churches whilst emphasizing Byzantine hegemony over the Slavic States, which were at this time threatening Byzantine interests in the Balkans. The independence of the Bulgarian and Serbian Churches was denied (although both were autocephalous) as was the right of other nations to proclaim themselves Empires. We can scarcely believe that the complete translation of the *Syntagma*, expressing these opinions, was ordered by the Tsar. Rather it expressed the aspirations and interests of the pro-Greek party in Serbia, as well as of those Byzantine citizens who had come under Serbian control after Dušan's conquests.⁵⁸ Following the appearance of the full translation in 1347–1348, work on the abbreviation of the *Syntagma* began. It should be noted that there is no Greek original of the abbreviated version in which all the chapters referring to the hegemony of Byzantium are omitted.

A second reason for undertaking the abbreviation was more practical. The abridged *Syntagma*, as part of Dušan's Code, was designed for use in the ordinary courts. For this reason most of the ecclesiastical rules were omitted and only those with secular application retained.⁵⁹

ναις 1859, reprint Athens 1966). There are three editions of the abridged *Syntagma*: Florinskiy, *Pamyatniki zakonodatelnoi dyatelnosti Dušana Tsara Serbov i Grekov*, pp. 95–203; V. Mošin, "Vlastareva Sintagma i Dušanov zakonik u Studeničkom Otečniku i Studenički palimpsest" ["Blastares' Syntagma and Dušan's Law Code in Studenitsa Otečnik and Studenitsa Palimpsest"], *Starine* 42 (1949), pp. 39–93. A third edition was done by S. Novaković in a peculiar way: in the full text of his edition he marked with bold letters those articles that were part of the abridged version.

58 S. Troicki, "Crkveno-politička ideologija Svetosavska Krmčije i Vlastareve Sintagme" ["Ecclesiastical and Political Ideology of Saint Sabba's Krmčija and Blastares' Syntagma"], *Glas SANU* 212 (1953), pp. 155–206.

59 The question may be posed why the Serbian compilers took the *Syntagma* from Matheas Blastares and not the *Hexabiblos* (Ἑξαβιβλος) from Constantine Harmenopoulos (Ἀρμενόπουλος), judge and *nomophylax* from Thessaloniki, which contains only secular rules. Besides, Harmenopoulos was an incomparably better lawyer than the monk Matheas Blastares. Although not a single manuscript of *Hexabiblos* is conserved in Serbia, we dispose with about 50 transcripts of the *Syntagma*. Whether it was a political or other reason for such a choice we cannot say, but some hypotheses exist. See A. Solovjev,

1.5.2 The So-called “Justinian’s Law” (Благовѣрнаго и Христолюбиваго Цара Юустиніана Закон)

This was the second part of the *Codex Tripartitus*. “Justinian’s Law” was a short compilation of thirty-three articles regulating agrarian relations. The majority of these articles were taken over from the famous *Farmer’s Law* (Νόμος Γεωργικός), issued between the end of the 7th and beginning of the 8th centuries. This law had been completely translated into the Old Serbian language. Further articles were culled from the *Ecloga* (Ἐκλογή τῶν νόμων, lit. *Selection of the Laws*), the *Procheiron* and the *Basilika* (τὰ βασιλικά). This collection also does not exist in a Greek version and so represents original work by Serbian lawyers.⁶⁰

1.5.3 Dušan’s Law Code (Законъ Благовѣрнаго Цара Стефана)

This third and most important part of the codification was issued at councils (съборъ) held in Skoplje (or Skopje)⁶¹ on 21 May 1349 (the first 135 articles) and in

Zakonodavstvo Stefana Dušana cara Srba i Grka [Legislation of Stefan Dušan, Tsar of the Serbs and Greeks] (Skoplje 1928), pp. 76–81 = *KJP* 16 (Belgrade 1998), pp. 303–561, and S. Šarkić, “Zašto Sintagma a ne Hexabiblos” [“Why Syntagma and not Hexabiblos”], *Zbornik Pravnog fakulteta u Zagrebu* 40–41 (1990), pp. 73–77. On *Syntagma* see also A. Solovjev, “L’oeuvre juridique de Matthieu Blastares”, *Studi bizantini e neoellenici* 5 (1939), pp. 698–707; V. Mošin, “Vlastareva Sintagma i Dušanov zakonik u Studeničkom Otečniku i Studenički palimpsest”, pp. 7–93; J. Panev, “La réception du Syntagma de Matthieu Blastarès en Serbie”, *Études balkaniques* 10 (2003), pp. 27–45; V.M. Minale, “Il Syntagma Alphabeticum di Matteo Blastares nella codificazione dello zar Stefan Dušan: alcune riflessioni di ordine cronologico”, *Atti dell’Accademia Pontaniana* 58 (2009), pp. 53–66 and “Il ‘Syntagma Alphabeticum’ di Matteo Blastares e lo ‘Zakonik’ di Stefan Dušan: nuove prospettive sul ‘Syntagma’ cd. abrégé”, *Index, Quaderni camerti di studi romanistici (International Survey of Roman Law)*, 45 (2017), pp. 187–211; V. Alexandrov, “The Syntagma of Matthew Blastares: The Destiny of a Byzantine Legal Code among the Orthodox Slavs and Romanians 14–17th Centuries”, *FBR* 29 (2012).

60 Edited by Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 236–240. A new edition, presented by B. Marković, *Justinijanov zakon, srednjovekovna vizantijsko-srpska pravna kompilacija* [Justinian’s Law, Byzanto-Serbian Medieval Legal Compilation] (Belgrade 2007), contains the original Old Slavonic text, a translation into modern Serbian language, photographs of four manuscripts and a summary in English. In the Bulgarian National Library “Cyrill and Methodius” in Sofia, there is a copy of a legal compilation called Soudatz (Судѡдѡцъ, “Court Law”), which represents a widespread edition of the “Justinian’s Law”, consisting of 87 articles. The text was composed either at the end of the 16th or at the beginning of the 17th century. The manuscript has a number 293 (63) in the inventory of the Library. Edited by M. Andreev and G. Cront, *La loi de Jugement, compilation attribuée aux empereurs Constantin et Justinien, versions slave et roumaine* (Bucarest 1971).

61 Modern capital of ex-Yugoslav Republic of Macedonia (North Macedonia).

Serres (Σέρραι, modern Greek Σέρρες)⁶² five years later (articles 136–201).⁶³ We know nothing about the procedure of the enactment nor regarding who were the redactors of the Code.

Although Dušan's Law Code represents an original work of Serbian legislation, many of its provisions were taken from Byzantine law, especially from the *Basilika*, a collection of laws completed c.892 in Constantinople by order of Emperor Leo VI.⁶⁴ The other sources of the Code were already promulgated

62 City in Greek Macedonia, capital of the Serres regional unit and the second largest city in the region of Central Macedonia, after Thessaloniki (population 76,817).

63 The numeration and the text of all the articles quoted in this book are according to the edition of Novaković, *Zakonik Stefana Dušana*.

64 N. Radojčić pointed out, in three treatises, that about 60 articles from *Dušan's Law Code* were directly taken from the *Basilika*. See "Snaga zakona po Dušanovom Zakoniku" ["Force of Law according to Dušan's Code"], *Glas SKA*, CX, drugi razred 62 (Sremski Karlovci 1923), pp. 100–139; "Vizantijsko pravo u Dušanovu Zakoniku" ["Byzantine Law in Dušan's Law Code"], *IC* 2 (1949–1950), pp. 10–17, and "Dušanov zakonik i vizantijsko pravo" ["Dušan's Law Code and Byzantine Law"], *Zbornik u čast šeste stogodišnjice Zakonika cara Dušana* [Essays in Honor of the Sixth Centenary of Tsar Dušan's Code] (Belgrade 1951), vol. 1, pp. 45–57. On the influence of Byzantine law on Serbian mediaeval law see also R. Hube, *O znazenju prava rzymskiego i rzymsko-bizantynskiego u narodów Słowiańskich* [On the Meanings of Roman and Roman-Byzantine Law by Slavonic Nations] (Warsaw 1868); Croatian translation by N. Miškatović, *O značenju prava rimskoga i rimsko bizantinskoga kod slavjanskih naroda* (Vienna 1869); French translation by the author, *Droit Romain et Gréco-Byzantin chez les peuples slaves* (Paris–Toulouse 1880); S. Novaković, "Srednjovekovna Srbija i rimsko pravo" ["Mediaeval Serbia and Roman Law"], *APDN* from 25.IV (1906), pp. 209–226; L. Namislawski, "Wege der Rezeption des Byzantinischen Rechts im mittelalterlichen Serbien", *Jahrbücher für Kultur und Geschichte der Slaven*, N. F. Band 1, Heft 11, (Wrocław 1929), pp. 139–152; Solovjev, *Zakonodavstvo Stefana Dušana*; A. Solovjev, "Značaj vizantijskog prava na Balkanu" ["Importance of Byzantine Law on the Balkans"], *Godišnjica Nikole Čupića* 37 (1928), pp. 95–141; A. Solovjev, "Le droit byzantin dans la codification d'Étienne Douchan", *Revue Historique du droit français et étranger* 7 (1928), pp. 387–412; A. Solovjev, "L'influence du droit byzantin dans les pays orthodoxes", *x Congresso Internazionale di Scienze storiche, Relazione VI* (Florence 1955), pp. 599–650; A. Solovjev, "Der Einfluß des Byzantinischen Rechts auf die Völker Osteuropas", *ZS-SR* 76, LXXXIX Band der Zeitschrift für Rechtsgeschichte, *Romanistische Abtailing* (1959), pp. 432–479; J.N. Ščapov (Я.Н. Щапов) "Receptiya sbornikov vizantijskogo prava v srednevekovykh balkanskikh gosudarstvach" ["Reception of Byzantine Law Miscellanies in Mediaeval Balkan States"], *VV* 37 (1976), pp. 123–129; S. Troyanos and S. Šarkić, "Ο κώδικας του Στέφανου Δουσάν και το βυζαντινό δίκαιο", in *Byzantium and Serbia in the 14th Century* (Athens 1996), pp. 248–256; L. Burgmann, "Mitelalterliche Übersetzungen byzantischer Rechtstexte", in *Antike Rechtsgeschichte, Einheit und Vielfalt, Österreichische Akademie der Wissenschaften, Philosophisch-historische Klasse, Sitzungsberichte*, 726. Band, ed. G. Thür (Vienna 2005), pp. 43–66, especially pp. 58–66; V.M. Minale, "Lo 'zakonik' di Stefan Dušan e i suoi legami con la legislazione bizantina", *Index* 37 (2009), pp. 219–228; P. Angelini, "L'influenza del diritto criminale bizantino nel Codice di Dušan 1349–1354", *Byzantina Symmeikta* 21 (2011),

charters (from which were taken numerous rules concerning the social position of the nobles and villeins) and the treaties with Dubrovnik (from which were taken the provisions concerning the privileges of the merchants). The intention of the legislator was to neglect completely the customary law, but still some influence of customs is reflected in the Code.

Dušan's Law Code treats the law of persons, the constitutional law, the penal law and the legal proceedings. The rules concerning the law of property, the law of wills and successions, and the law of obligations are very rare in the code. Those provisions were mostly regulated by the *Syntagma* of Matheas Blastares and the so-called "*Justinian's Law*". The system of Dušan's Law Code does not correspond to modern codifications.⁶⁵ A certain harmony can be noticed only for the first eighty-three articles. Articles 1–38 concern the Church and clerics;⁶⁶ the privileges of the noblemen are regulated in articles 39–63, while the social position of the villeins (*sebri*, себри) in articles 64–83. From article 84 of the Code onwards (articles 84–201), no regularity or system can be recognized.

The first group of articles regulates the legal position of the Church, with the intention of ensuring the purity of the faith and securing political power of the Church. Clergymen were exempted from secular jurisdiction, only religious marriage was to be allowed, and the punishments against heresies and for being contrary to the influence of Roman Catholic Church were prescribed. However, canon law was much more represented in the *Nomokanon* of Saint Sabba and in the *Syntagma* of Matheas Blastares. Dušan's Law Code does not repeat the provisions contained in the *Nomokanon* and *Syntagma*, but can be seen as their supplement, sometimes making them more strict.

The second group of articles treats the rights and obligations of noblemen and villeins. The Code unifies the legal status of all social classes and guarantees the privileges of noblemen, either Serbian or Byzantine (in the regions

pp. 217–253; S. Šarkić, "Uticaj vizantijskog prava na srednjovekovno srpsko pravo" ["The Influence of Byzantine Law on Serbian Medieval Law"], *Slověne, International Journal of Slavic Studies, Institute for Slavic Studies of the Russian Academy of Science* (2015), pp. 106–118.

65 D. Mijušković, "Sistem Dušanovog zakonika" ["System of Dušan's Law Code"], *Srpski pregled*, nos 4, 5 and 6 (1895), tried to find the system of the *Code*, but eventually had to admit that strict rules did not exist.

66 It might be the influence of Byzantine law since the first book of the *Justinian's Code* begins with 13 titles concerning ecclesiastical law, under the title *De summa trinitate et de fide catholica et ut nemo de ea publice contendere audeat* (*Cod. Iust.* 1, 1–13). Editors of the *Basilika* translated this heading as Περὶ τῆς ἀνώτατω τριάδος καὶ πίστεως καθολικῆς καὶ περὶ τοῦ μηδὲνα τολμᾶν περὶ αὐτῆς δημοσίως ἀμφισβητεῖν (*Basilicorum libri LX, libri 1, titulus 1*, ed. H.J. Scheltema, N. Van Der Wal, and D. Holwerda [Gröningen 1953], p. 1).

conquered from Byzantium), or hereditary estate holders and fief holders (*pronoia*). The hereditary estate holders had a full and unlimited right on their manor (*baština*, БАШТИНА). The lord, who was the hereditary estate holder, could freely dispose of his property: sell it, give it as a present, or alienate in any other way. The Emperor could deprive the hereditary estate holder of his manor only in a case of high treason. On the other hand, a fief (*pronoia*) was land held by military tenure and could be succeeded only in the case when a fief holder's heir accepted the military service. A fief remained always in the Tsar's *dominium*, and its tenant had no right of ownership, and could not sell it or alienate it in any other way. Through article 139 of the Code,⁶⁷ Tsar Dušan wanted to protect the villagers from the abuses of the Church and noblemen. The main reason was, probably, a deficit of manpower.

In the matter of criminal law, Dušan's Law Code accepted the Byzantine concept of a crime. Serbian 13th-century law treated a crime as a private blood feud, in which a family seeks to avenge one of their members on the offender or his family. Dušan's Law Code changes this and treats a crime or public offence as an act committed or omitted in violation of a law. However, a crime is not only the trespass of secular law, but is also a sin, i.e. violation of divine law. The Code established a rigorous Byzantine system of punishment that was attenuated by the existence of the right of asylum.

According to the feudal system of the society, Dušan's Law Code provides different courts for all social classes. The jury system (*porota*, ПОРОТА, from Old Serbian word *rota*, oath) provides for the reference of the dispute to assessors of equal rank with the litigants, and to the empanelling in the proportion of half and half to represent each party. The *porota* was not a jury in the English sense of the word today, as it was used in civil but not in criminal cases. Also, it did not merely give verdicts, but actually tried cases. It had, in fact, judicial functions. Dušan retained a judge attached to his Imperial Court of Justice (*sudije carstva mi*) to try cases actually arising there. The Imperial Court had to judge noblemen, the inhabitants of the Tsar's manors and towns, and all commoners for so-called "Imperial cases" (*carski dugovi*), such as *nevera* (treason), *provod* or *prejem ljudski* (helping a serf to flee anywhere from his lord), *vražda* (murder, homicide), *krv* (lit. "blood", i.e. wounding), *konj* or *svod konjski* (stealing of a horse), *zemlja* (lit. "land", i. e. disputes arising over land), *tat* (thief) and *gusar* (brigand).⁶⁸

67 On article 139, see Chapter 5.

68 For more details see chapters dedicated to criminal law and legal proceedings.

The fundamental intention of Dušan's Law Code was that all social relations must be regulated by law. Law is above the Emperor. In article 78 the Tsar places the written law above any deeds or gift or title issued by him, but only in connection with disputes over land, where the Church is involved. In article 105, where his writs clash with the law, the judges have instructions to refer the matter back to him. However, articles 171 and 172 provide that judges have to judge according to the Code, and not through fear of the Tsar.

The original text of the Code has not survived, but we do have twenty-six transcripts.⁶⁹ The oldest is Struga's⁷⁰ manuscript from about 1395. The text is very damaged, and it has only 104 articles, without the beginning and the end. From the beginning of the 15th century we have the transcript from Athos (Ἀθῶς),⁷¹ which contains 173 articles. The largest version is that from Prizren (end of the 15th century; 186 articles, with the break on the last article), which was used by Stojan Novaković as the basis for his edition of the Code. Among the later transcripts, the most important is the manuscript from Rakovac⁷² from 1700, containing fifteen articles that could not be found in any other transcript.⁷³

69 It could be possible that the number of transcripts will increase. In 1851, Šafarik knew of only 10 copies; Florinskiy, in 1888, had 17 transcripts and Novaković in 1898, when he was preparing his edition, knew 20 copies.

70 Struga (Macedonian Cyrillic *Струга*) is a town in the southwestern region of North Macedonia, lying on the shore of Lake Ohrid (population 16,559).

71 Mountain and peninsula in northeastern Greece and an important centre of Eastern Orthodox monasticism.

72 Serbian Cyrillic *Раковац*, small village and monastery on the right bank of Danube, near Novi Sad (*Нова Сад*), second largest town in Serbia and the capital of the province of Vojvodina (*Војводина*).

73 On the transcripts of Dušan's Law Code, see M. Bartoš, "Zbornik rukopisa Zakonika cara Stefana Dušana (1349. i 1354. godine)" ["Collected Manuscripts of Dušan's Law Code, 1349 and 1354"], in *Zakonik cara Stefana Dušana, Struški i Atonski rukopis* [The Law Code of Stefan Dušan, Manuscripts of Athos and Struga] (Belgrade 1975), pp. 1–23; A. Solovjev, *Zakonik cara Stefana Dušana 1349. i 1354. godine* [The Law Code of Stefan Dušan 1349 and 1354] (Belgrade 1980), pp. 37–149; D. Bogdanović, "Rukopisi Dušanovog zakonika" ["Manuscripts of Dušan's Law Code"], in *Dušanov zakonik, ssk, knjiga 8* [Dušan's Law Code, Old Serbian Literature, Book 8] (Belgrade 1986), pp. 101–108; Đ. Bubalo, "Rukopisi Dušanovog zakonika" ["Manuscripts of Dušan's Law Code"], in *Dušanov zakonik* [Dušan's Code] (Belgrade 2010), pp. 25–63 and Đ. Bubalo, "Ogled iz istorije teksta Dušanovog zakonika, *Rukopisno okruženje*" ["A Prolusion on the History of the Text of Dušan's Code"], *ZRVI* 50/2 (2013), pp. 725–740. The Serbian Academy for Science and Art (*Српска Академија Наука и Уметности*) published all transcripts of Dušan's Law Code in four volumes: the manuscripts of Struga and Athos (vol. I, Belgrade 1975); the manuscripts of Studenitz, Hilandar, Hodoš and Bistritza (vol. II, Belgrade 1981); the manuscripts of Baranja, Prizren, Šišatovac, Rakovac, Ravanitz and Sofia (vol. III, Belgrade 1997); the manuscripts of Pat-

Since 1795, when Dušan's Law Code, according to Tekelija's⁷⁴ manuscript, was for the first time published, as the appendix of the volume IV of Jovan Rajić's⁷⁵ *History of Various Slavonic Peoples, Particularly Bulgarians, Croats and Serbs*,⁷⁶ translations of the Code into other languages started to appear. To the present day we dispose with several translations into different languages, such as German,⁷⁷ French,⁷⁸ Polish,⁷⁹ Russian,⁸⁰ Romanian,⁸¹ English,⁸² Slovenian,⁸³ Greek,⁸⁴ Italian⁸⁵ and modern Serbian.⁸⁶

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- riarchate, Bordoških, Popinci, Tekelija, Sandić, Kovilj, Belgrade, Reževići, Karlovci, Vršac, Grbalj, Bogišić and Jagić (vol. IV, Book 1–2, Belgrade 2015). The best edition of the Code is considered Novaković, *Zakonik Stefana Dušana*. Scholars also use the edition of N. Radojčić, *Zakonik cara Stefana Dušana 1349 i 1354* [The Code of Tsar Stefan Dušan 1349 and 1354] (Belgrade 1960). See also the latest edition of the Code: Bubalo, *Dušanov zakonik*.
- 74 Sava Tekelija (Serbian Cyrillic *Сава Текелија*, Hungarian *Száva Thököly*, 1761–1842) was among the first Serbs to have defended a doctoral thesis in jurisprudence (1786, University of Pest). He came from a famous Serb family of noblemen in Habsburg Monarchy. As a rich merchant and philanthropist he founded in Pest the Collegium Tökölyanum, for Serbian students studying in the city. Tekelija was the patron of Matica Srpska, first Serbian scientific society, founded in Pest in 1826 and transferred in 1864 to Novi Sad.
- 75 Jovan Rajić (Serbian Cyrillic *Јован Рајић*, 1726–1801) was forerunner to modern Serbian historiography.
- 76 J. Rajić, *Istoria raznih slavenskih narodov, naipače Bolgar, Horvatov i Serbov* (Vienna 1794–1795). Dušan's Law Code was added by Stefan Novaković as editor of the book (vol. IV, pp. 242–270).
- 77 The first translation into German, according to the Tekelija's manuscript, was done by F.Ch. Engel and inserted in his book *Geschichte des Ungarischen Reiches und seiner Nebenländer. T. II. Geschichte von Servien und Bosnien* (Halle 1801), pp. 293–310. Using the transcripts of Rakovac and Hodoš, P.J. Šafarik made a better translation of the Code and sent it to Polish scholar A. Kucharski, who published it in his work *Antiquissima monumenta juris slovenici* (Warsaw 1838), pp. 92–226. Twenty years later W.A. Maciejowski in vol. VI of his *Historja prawodawstw slawiańskich* [History of Slavic Laws] (Warsaw 1858), pp. 305–385 made a new translation in German and in Polish. P.J. Šafarik also did another translation in German and published it in his book *Geschichte der südslavischen Literatur. III. Das serbische Schriftthum. Aus dessen hand schriftlichen Nachlasse herausgegeben von J. Jireček* (Prague 1865), pp. 50–56. The most recent translation into German, according to the edition of S. Novaković, was done by J. Gerassimovitsch, *Duschans Gesetzgebung. Verfassungsurkunde des serbischen Kaiserreiches* (Bonn am Rhein 1912).
- 78 Using Engel's German text of the Code, A. Boué made the first translation into French, which was published in his book *La Turquie d'Europe. T. IV* (Paris 1840), pp. 426–441. Much better (according to Novaković's edition) was the translation of P. Lebl, *Le Code Douchane, Étude sur l'histoire du droit public serbe* (Paris 1912), pp. 30–69. The manuscript from Athos was translated by Jeanne Milovanović, *Code de l'empereur Douchan, le manuscrit de l'Athos*, in *Zakonik cara Stefana Dušana, struški i atonski rukopis* (Belgrade 1975), pp. 223–250.
- 79 Beside Maciejowski's translation (see note 76), we have one more into Polish done by S. Borowski, *Materiały dla ćwiczeń seminaryjnych z historii praw słowiańskich. Zeszyt 1. Statuty cara Stefana Duszana z lat 1349. i 1354* (Warsaw 1934).

The question of how Dušan's Law Code was applied cannot be precisely solved. The problem lies in the lack of additional, relevant legal sources (verdicts) that could serve as evidence.⁸⁷

- 80 The first translation into Russian was done by Filaret, Archbishop of Chernigov (Russian *Черниговъ*, Ukrainian *Чернігів*, today in northern Ukraine) in his book *Sacred Thing of South Slavs* (*Svjatye Južnich Slavyan*, vol. II [Chernigov 1865], pp. 68–74). Archbishop Filaret translated only 31 articles, i.e. the provisions regarding the Church, using the text of the Code from Rajić's *History*. A few years later, E.E. Golubinskiy, in his *History of Orthodox Churches of Bulgarians, Serbs and Roumanians or Moldo-Walachians* (*Kratkii očerk istorii pravoslavnihih cerkvei bolgarskoy, serbskoy i ruminskoy ili moldo-valaškoy* [Moscow 1871]) translated 61 articles concerning the Church (pp. 681–689), using Šafarik's edition. A complete translation, according to the manuscript of Prizren and 24 articles from the transcript of Rakovac, was done by F. Zigelj, *Zakonnik Stefana Dušana* (Saint Petersburg 1872), pp. 9–15. The translation of the manuscript of Prizren, by M. Petković, could be found in vol. III of the editions of the Serbian Academy for Science (Belgrade 1997, pp. 433–462).
- 81 A very good translation by J. Peretz, *Začonicul lui Ștefan Dușan țarul Serbiei 1349. și 1354. Partea I* (Bucharest 1905).
- 82 An excellent translation, according to Novaković's edition was done by M. Burr, "The Code of Stephan Dušan Tsar and Autocrat of the Serbs and Greeks", *The Slavonic and East European Review*, 70, 28 (1949), pp. 198–217; 71, 28 (1950), pp. 516–539. Although Malcolm Burr was a botanist, he served as an officer in the British intelligence services in Serbia during the First World War, and became attached to Serbian history. His translation was improved by Aleksandar Solovjev, a great Serbian specialist (of Russian origin) in legal history. Đurica Krstić translated the manuscript of Bistritza in vol. II of Serbian Academy's editions (Belgrade 1994, pp. 235–262).
- 83 An excellent translation by M. Dolenc, *Dušanov zakonik. primerjalni prikaz pravnih razmer po Dušanovem zakoniku in po istodobnem germanskem pravu s posebnim obzirom na Slovence* (Ljubljana 1925), pp. 176–200.
- 84 Λ. Χατζηπροδρομίδης, Στέφανος Δουσάν, αυτοκράτορας Σερβίας και Ελλάδας. Ο κώδικας νόμων (Athens 1983). The translation was done according to the manuscript of Athos.
- 85 P. Angelini, *Il Codice di Dušan 1349–1354. Legislazione greco-romana e amministrazione dell'impero serbo-bizantino*, Storia del diritto e delle istituzioni, Studi 14 (Rome 2014), pp. 157–190.
- 86 The first translation into the modern Serbian language was done by Đ. Pantelić in *Sudski list I* (Belgrade 1869), pp. 22–27 and 37–39. The author translated only 19 provisions regarding the Church. Today we dispose with two excellent translations in the editions of N. Radojčić and Đ. Bubalo (see note 72). For more details on translations of the Code, until the year 1980, see Solovjev, *Zakonik cara Stefana Dušana*, pp. 33–35.
- 87 See S. Šarkić, "The Application of Dušan's Code according to the Chronicle of Ioannina", in *ΚΑΤΕΥΘΑΙΟΝ in memoriam Nikos Oikonomides, FBR, Athener Reihe*, ed. Spyros Troianos (Athens—Komotini 2008), pp. 161–171. A bibliography of the works concerning the Law Code of Stefan Dušan was recently made by G. Radojčić-Kostić, *Bibliografija o zakonodavstvu cara Stefana Dušana* [Bibliography of Emperor Stefan Dušan's Legislation] (Belgrade 2006) (enlarged edition at <http://monumentaserbica.com/dz/>, 25.10.2012).

1.6 *Law of Mines of Despot Stefan Lazarević*

The Law of Mines (*Zakon o rudnicima*, ЗАКОННИКЪ БЛАГОЧЪСТЫВАГО И ХРИСТОЛЮБИВАГО ИЖЕ ВЪ ЦАРЕХЪ СТЕФАНА ДЕСПОТА. ВЪ ЦЕХОВѢ, И ВЪ БАЦИНАХЪ. И ВЪ ВЪРѢ, И ВЪ КОЛѢХЪ. И ВЪ ВЪСАКЪХЪ ПОТРУБНЫХЪ СЪДОВѢХЪ) was promulgated in 1412 by Stefan Lazarević with the intention of regulating the legal position of German miners (so-called *Sasi*, i.e. Saxons) living and working in Novo Brdo,⁸⁸ the most important mine-city in mediaeval Serbia. The text of the law was composed by twenty-four miners, who were not working in Novo Brdo. Despot Stefan gave it a legal power with his signature and seal. As the majority of the workers in the mine were of German origin, the text contained a lot of German words, extremely changed in Serbian, to the extent of being practically impossible to recognize. After the Turkish conquest of Novo Brdo, the law was translated into Turkish and later applied.⁸⁹

1.7 *Serbian Translation of the Farmer's Law (ЗАКОН ДЪЛАТЕЛЬНЪ ИЗБРАНЪ ВЪ КНИГѢ ЦАРА ІУСТІНІАНА)*

In the archives of the monastery of Hilandar the manuscript of the Serbian translation of the famous Farmer's Law (Νόμος Γεωργικός) can be found. It is possible that the translation was done during the reign of Tsar Dušan, but the transcript that we dispose with was written between 1426 and 1432. Probably, the Farmers Law regulated the agrarian relationships on the monastery lands.⁹⁰

88 Novo Brdo (Serbian Cyrillic *Ново Брдо*, Albanian *Novo Bërdë* or *Artanë*, from Latin *Novus Mons* and *Nyeubergh* in Saxon texts) is today a town in the Priština district of eastern Kosovo.

89 Edited by N. Radojčić, *Zakon o rudnicima despota Stefana Lazarevića* [Law of Mines of Despot Stefan Lazarević] (Belgrade 1962). A translation into modern Serbian with commentaries was done by B. Marković, *Zakon o rudnicima despota Stefana Lazarevića* [Law of Mines of Despot Stefan Lazarević], *Spomenik SANU CXXXVI* (Belgrade 1985). A Turkish translation was published by N. Beldiceanu, *Les actes des premiers sultans conservés dans les manuscrits turcs de la Bibliothèque nationale à Paris II* (Paris–The Hague 1964), pp. 245–254. The Latin-alphabet transliteration of the Code, done in 1638 in the Bulgarian town of Čiprovac, has been recently edited by S. Ćirković, *Latinički prepis Rudarskog zakonika despota Stefana Lazarevića* [The Latin-Alphabet Transliteration of Despot Stefan Lazarević's Mining Code], Serbian Academy of Sciences and Arts, Department of Social Sciences, Sources of Serbian Law LX (Belgrade 2005). Cf. S. Šarkić, "Les traces du droit médiéval serbe dans les sources juridiques turques", *Slovenian Law Review* 6.1–2 (December 2009), pp. 137–142.

90 Edited with commentaries by Radojčić, Đ. Sp., "Srpski rukopis Zemljoradničkog zakona" ["Serbian Manuscript of the Farmer's Law"], *ZRVI* 3 (1955), pp. 15–28. The new edition by M. Blagojević, *Zemljoradnički zakon, srednjovekovni rukopis* [Agricultural Law, Medieval Manuscript], Serbian Academy of Sciences and Arts, Department of Social Sciences,

1.8 City Statutes

In mediaeval Serbia there were no autonomous cities, and the citizenry was not an autonomous class (*tiers état*), like it was in the Occidental European countries. Only the cities on the Adriatic coast has some kind of autonomy, which was confirmed in their city-statutes. Among the city-statutes there survive only two: the Statute of Kotor⁹¹ and the Statute of Budva.⁹² The Statute of the city of Skadar also has some importance for Serbian mediaeval law.⁹³

The city of Kotor was part of the Serbian mediaeval State from 1186 until 1370 and during this time enjoyed a large degree of autonomy. The oldest provisions in its Statute, written in Latin, are from the year 1301, where the relationship with Serbian monarchs is precisely determined.⁹⁴

The original Latin text of Budva's Statute from the 14th century has not survived. Instead we only have an Italian translation from the end of the 17th century. This document shows us that the autonomy of Budva was lesser than that of Kotor.⁹⁵

The Statute of Skadar (*Statuta Scodrae*) was written in the mediaeval Italian language, and it seems that it was composed in the first part of the 14th century (more precisely before 1346, when Stefan Dušan took the title of Tsar), when Skadar was a part of the Serbian mediaeval State.⁹⁶ Chapter 274 of the Statute,

Sources of Serbian Law XIV (Belgrade 2007), contains the Old Slavonic text, a translation into modern Serbian, and detailed comments and photographs of the manuscript.

- 91 Kotor (Serbian Cyrillic *Komop*, Italian *Cattaro*, Latin *Catharus* or *Ascrivium*) is a coastal town in Montenegro. It is located in a secluded part of Kotor Bay (Boka Kotorska). The city has a population of 13,510.
- 92 Budva (Serbian Cyrillic *Byðea*, Italian *Budua*, Ancient Greek *Βούδιον*) is a Montenegrin town on the Adriatic Sea. The *Budva riviera* is the centre of Montenegrin tourism today. The city has a population of 15,915.
- 93 Skadar (Latin *Scodra*, Serbian Cyrillic *Скадар*, Albanian *Shkodër*, Italian *Scutari*, Turkish *İşkodra* or *Arnavut İşkenderiyesi*) is a city in the Republic of Albania, and it is the capital of the surrounding county of Shkodër. The city has a population of 135,612.
- 94 *Statuta et leges civitatis Cathari* (Venice 1616). The new edition *Statuta civitatis Cathari, Statut grada Kotora* [Statutes of the City of Kotor], vols 1–11 (Kotor 2009), contains a reprint of the original Latin text from 1616 (vol. 1) and a translation into modern Serbian by a group of authors (vol. 11).
- 95 Edited by S. Ljubić, *Statuta et leges civitatis Buduae, civitatis Scardonae, et civitatis Lesinae*, MHJSM, pars I, vol. III (Zagreb 1882–1883). The Statute was translated into Serbian by N. Vučković, *Srednjovekovni statut grada Budve* [Mediaeval Statute of the City of Budva] (Budva 1970). The new edition of the Statute, *Statut Budve* [Statute of Budva], edited by N. Luketić and Ž. Bujuklić (Budva 1988), contains the Italian text of Ljubić's edition and Vučković's translation.
- 96 Edited by L. Nadin, *Statuti di Scutari della prima metà del secolo XIV con le addizioni fino al 1469, a cura Lucia Nadin, traduzione in Albanese a cura di Pëllumb Xhufi, con*

under the title *Del pesce tocha al conte et pagar d'altre mercantie* ("On fishes that belong to the Count and payment of other goods"), represents the translation of Tsar Dušan's charter issued to the city of Skadar between 1346 and 1355. A Serbian version of the text has not survived, but the Italian translation was incorporated into the Statute on 10 May 1393, after the establishment once again of Venetian power in the city (1392).⁹⁷

Although the City Republic of Dubrovnik (Ragusa) never belonged to the Serbian mediaeval State, its Statute⁹⁸ is an important source for the Serbian mediaeval law. Most important are the provisions concerning judicial trials among Serbs and Ragusans.

2 Other Sources

2.1 *Hagiographies and Annals*

Some literary sources have importance for legal history, such as hagiographies⁹⁹ and annals. As these texts are the object of literary studies we shall present them at a glance.¹⁰⁰

saggi introduttivi di Giovan Battista Pellegrini, Oliver Jens Schmitt e Gherardo Ortalli, Viella (Rome 2001). The book has been published as the 15th in the edition *Corpus statutario delle Venezie*. On the basis of L. Nadin's edition, N. Bogojević-Glušćević prepared a Serbian edition, with a translation into modern Serbian: *Statut grada Skadra iz prve polovine XIV vijeka sa dodacima završno sa 1461. godinom* [The Statute of the City of Skadar from the First Part of the 14th Century with the Additions Till the Year 1461] (Podgorica 2016).

97 The charter was edited by S. Ćirković, "Prevod povelje cara Stefana Dušana gradu Skadru" ["Translation of Tsar Dušan's Charter to the City of Skadar"], *SSA* 6 (2007), pp. 113–121.

98 Edited by V. Bogišić and K. Jireček, *Liber statutorum civitatis Ragusii, compositus anno 1272*, MHJSM, vol. IX (Zagreb 1904). The new edition *Statut grada Dubrovnika, sastavljen godine 1272* [Statute of the City of Dubrovnik, Composed AD 1272] (Dubrovnik 2002), contains the Latin text on the basis of Bogišić and Jireček's edition, translation into modern Croatian done by A. Šoljić, Z. Šundrica, and I. Veselić, and an introduction by N. Lonza.

99 Modern term for the genre of Byzantine literature whose aims were the veneration of the saint and the creation of an ideal of Christian behaviour as well as documentation and entertainment.

100 For more details on Serbian mediaeval literature, see Šafarik, *Geschichte der südslavischen Literatur*, 111; V. Jagić, *Historija književnosti naroda hrvatskoga i srpskoga, knjiga prva, Staro doba* [History of the Literature of Croatian and Serbian People, Book One, The Old Epoch] (Zagreb 1867); M. Kašanin, *Srpska književnost u srednjem veku* [Serbian Literature in the Middle Ages] (Belgrade 1975); St. Hafner, *Serbisches Mittelalter. Altserbische Herrscherbiographien* (Graz–Vienna–Cologne 1976), and especially D. Bogdanović, *Istorija stare srpske književnosti* [History of Old Serbian Literature] (Belgrade 1980, second edition 1991).

The oldest annalistic work in Serbian literature is the Latin translation of so-called *Annals of the Priest from Diokleia* (see above), while Serbian hagiographies appear from the early 13th century with the literary activity of King Stefan Nemanjić and his brother Archbishop Sava (Saint Sabba).

Saint Sabba is considered the real founder of Serbian mediaeval literature. Among the numerous works that he wrote, the most important for legal history is the biography of his father Stefan Nemanja (written 1208), under the title *The Life of Saint Simon* (*Žitije Svetog Simeona*).¹⁰¹ Sabba pointed out the monastic life of Nemanja, after his abdication, when he became a monk with the name Simon (Simeon, СѴМѢОН). The historical facts about Nemanja's life are neglected in order to advance the idea of rejecting the throne and power in life on Earth for the benefit of the Kingdom of Heaven.

In 1216, Sabba's elder brother, the first Serbian King Stefan, also wrote a *Life of Saint Simon*.¹⁰² This hagiography is a very important historical source, because Stefan gives many facts about the life of his father, before his departure to the Holy Mountain. The hagiography contains the story of seven miracles that Saint Simon (Nemanja) made, though these are without historical basis.

Domentian (Доментијан), monk from the Holy Mountain and pupil of Saint Sabba, wrote two hagiographies concerning the lives of Stefan Nemanja and Saint Sabba.¹⁰³ Saint Sabba's biography was written between 1243 and 1254, on the demand of the King Uroš 1. Later on (1264), on the demand of the King Uroš as well, Domentian wrote a hagiography of Saint Simon (Stefan Nemanja), using not only the Serbian sources and his personal experience, but some Russian historical works as well.

Theodosios (Теодосије), the younger Domentian's contemporary, is the author of another hagiography of Saint Sabba.¹⁰⁴ The text was written in the

101 Editions: Ćorović, *Spisi Svetog Save*, pp. 151–175; T. Jovanović, *Sveti Sava, Sabrana dela* [Saint Sabba, Complete Works] (Belgrade 1998), pp. 147–191.

102 Edited by V. Ćorović, “Žitije Simenona Nemanje od Stefana Prvovenčanog” [“The Life of Simon Nemanja by Stefan the First Crowned”], *SZ* 2 (1938), pp. 1–76. The new edition with the translation into modern Serbian was done by Jovanović and Juhas-Georgijevska, *Stefan Prvovenčani, Sabrana dela*, pp. 14–107.

103 Edited by Đ. Daničić, *Domentijan, Život sv. Simeona i sv. Save* [Domentian, Life of St. Simon and St. Sabba] (Belgrade 1865). A new edition of the Life of Saint Sabba was done by T. Jovanović, *Domentijan, Žitije Svetog Save* [Domentijan, Life of Saint Sabba] (Belgrade 2001).

104 Edited by Đ. Daničić, *Život sv. Save, napisao Domentijan* [Life of St. Sabba, Written by Domentijan], (Belgrade 1860). Daničić wrongly thought that the author of this hagiography was Domentian and not Theodosios. A new edition *Teodosije Hilandarac, Život Svetoga Save* [Theodosios from Hilandar, Life of Saint Sabba], has been carried out by Đ. Trifunović, on the basis of Daničić's edition (Belgrade 1973).

monastery of Hilandar at the end of the 13th century. The main source for Theodosios' is the work of Domentian, but he made many changes in content and style, so that one can speak of an original work.

The Lives of the Serbian Kings and Archbishops by Archbishop Danilo II is one of the most important historical sources.¹⁰⁵ Its author is a very well-known person in Serbian history. Born about 1270 as a nobleman, he started his career as a courtier of King Milutin, but soon became a monk. He spent most of his monastic life in Hilandar, and from 1324 until his death in 1337 he was the Archbishop of the Serbian Church.¹⁰⁶ He described the lives of King Uroš I, King Dragutin, Queen Helen,¹⁰⁷ King Milutin and the Archbishops Arsenios I, Ioanikios I and Eusthathios I. Two anonymous authors, known as "Danilo's continuators", completed his work. The first of them wrote hagiographies of King Stefan Dečanski, King Dušan and Archbishop Danilo II. The miscellany was completed after 1375 by the "second continuator" with the biographies of the first, second and third Serbian Patriarchs—Ioanikios, Sabba and Ephraim.

Gregory Tzambalak (Григорије Цамблак), who came to Serbia from Bulgaria, probably in 1402, and stayed until 1406 as the superior (hegoumenos, ἡγουμενος, fem. ἡγουμένησσα) of the monastery of Dečani, wrote a hagiography of King Stefan Dečanski.¹⁰⁸

An anonymous author wrote the first Serbian genealogy between 1374 and 1377. This short text, under the title *Short History of the Serbian Rulers* (*Kratka istorija vladara srpskih*), exposes facts about the origin of the Serbian dynasty. The purpose of the first Serbian genealogy was to confirm the legitimacy of the Bosnian rulers (ban, Serbian Cyrillic бан) Tvrtko Kotromanić's (Твртко Котроманић) pretensions on the royal crown.¹⁰⁹ In the 15th and 16th centuries, the

105 Edited by Đ. Daničić, *Životi kraljeva i arhiepiskopa srpskih, napisao Arhiepiskop Danilo i drugi* [The Lives of the Serbian Kings and Archbishops, Written by Archbishop Danilo and Others] (Zagreb 1866, reprint London 1972).

106 On Danilo II (Serbian Cyrillic Данило) see the miscellany from the international meeting to mark the 650th anniversary of his death: *Arhiepiskop Danilo II i njegovo doba* [Archbishop Danilo II and his Epoch] (Belgrade 1991).

107 Helen of Anjou (French *Hélène d'Anjou*, Serbian Cyrillic Јелена Анжујска) was the spouse of King Stefan Uroš I. Her children were the later Kings Stefan Dragutin and Stefan Milutin.

108 Edited by J. Šafarik, "Žitije Stefana Dečanskog" ["The Life of Stefan Dečanski"], *Glasnik DSS* 11 (1858), pp. 35–94. New edition by A. Davidov, G. Dančev, N. Dončeva-Panayotova, P. Kovačeva, and T. Genčeva, *Žitie na Stefan Dečanski ot Grigoriy Tzambalak* [The Life of Stefan Dečanski by Grigoriy Tzambalak] (Sofia 1983).

109 In 1377 the Bosnian ban Tvrtko Kotromanić took the royal title. He was crowned in the monastery of Mileševa (Милешева, in southern Serbia) with "the crown of Saint Sabba", so he emphasized his pretensions on the throne of Nemanjić's dynasty, because the Emperor

source got a new redaction with facts concerning the reign of the last Serbian Despot from the families Lazarević, Branković and Jakšić.

The first Serbian annals cover the years 1350–1360, and they are written under the influence of Byzantine chronographies.¹¹⁰ Among the Byzantine chronographies translated in Serbia, the most important is the translation of John Zonara's historical work. The translation was done probably in the beginning of the 14th century, in the time of King Milutin, but we dispose today with a later transcript, done on the demand of Despot Stefan Lazarević. The Serbian version is known under the title *Paraleipomen* (Παραλειπόμεν), and it was done in 1407 or 1408 by the monk Gregory of Hilandar.¹¹¹

The hagiography of Despot Stefan Lazarević was written between 1433 and 1439 by the Bulgarian scholar Constantine the Philosopher (Константин Философ).¹¹² Constantine came to Serbia in 1410 and became a "teacher" at the Despot's court in Belgrade. Describing the life of Despot Stefan, Constantine the Philosopher compares his hero not only with biblical personalities (as was usual in mediaeval hagiographies), but with heros from Greek antiquity as well. We could say that Constantine's model was Plutarch's biography of Alexander the Great.

One of the most unusual books from Serbian mediaeval literature is *Memoirs of a Janizary* by Constantine Mihajlović (Константин Михајловић). A Serbian soldier, captured by the Turks when they conquered the city of Novo Brdo (1455), Constantine converted to Islam, became a janizary and participated in many battles with the Turkish army. In about 1463 he was captured by the Hungarians, turned back to Christianity, and spent the rest of his life (he died after 1501) in Hungary and Poland. Between 1497 and 1501 he wrote his *Memoirs* as some kind of memorandum addressed to the Polish King John I Albert (Polish *Ian I Olbracht*), inviting him to start a crusade against the Turks. Constantine's work is a very precious historical source, from an author who was

Uroš died 1371 without successor. Tvrtko's grandfather, Bosnian *ban* Stefan was married to the King's Dragutin daughter Elisabeth (Јелисавета).

110 The genealogies and annals are edited by Lj. Stojanović, *Stari srpski rodoslovi i letopisi* [Old Serbian Genealogies and Annals] (Belgrade–Sremski Karlovci 1927).

111 Edited by A. Jakobs, *Ζωναράς—Zonara. Die byzantinische Geschichte bei Joannes Zonaras in slawischer Übersetzung* (Munich 1970).

112 Edited by V. Jagić, "Konstantin Filozof i njegov život Stefana Lazarevića" ["Constantine the Philosopher and his Life of Stefan Lazarević"], *Glasnik SUD* 42 (1875), pp. 223–328. A new edition was published in Bulgaria in the late twentieth century by K. Kuev and G. Petkov, *Sbrani sčinenija na Konstantin Kostenečki* [Complete Works of Constantine Kostenečki] (Sofia 1986), pp. 314–515. Cf. N. Radošević, "Laudes Serbiae. The Life of Despot Stefan Lazarević by Constantine the Philosopher", *ZRVI* 24/25 (1986), pp. 445–451.

a Christian who lived and fought for eight years in Turkey. The original text, written in Serbian, does not survive, but we have today many transcripts of the Polish translation.¹¹³

2.2 *Inscriptions*

The Serbian scholar Ljubomir Stojanović¹¹⁴ made a collection of Old Serbian inscriptions.¹¹⁵ Some of them have legal contents and great importance for legal history. Some inscriptions with historical content on a wall paintings (vol. I covers 12th–13th centuries) were recently published by the Byzantine Institute of Serbian Academy of Sciences and Arts.¹¹⁶ However, this collection does not have any great importance for legal history.

- 113 Edited by Đ. Živanović, *Konstantin Mihajlović iz Ostrovice, Janjičarove uspomene* [Constantine Mihajlović from Ostrovitza, Memoirs of a Janizary], Spomenik SANU 107 (Belgrade 1959), pp. 1–170 = SSK, knjiga 15 (Belgrade 1986).
- 114 Ljubomir Stojanović (Serbian Cyrillic *Љубомир Стојановић*, 1860–1930) was a distinguished Serbian statesman, politician, philologist, professor at the High School (later University) of Belgrade and member of the Serbian Royal Academy.
- 115 Lj. Stojanović, *Stari srpski zapisi i natpisi* [Old Serbian Notes and Inscriptions], I–VI (Belgrade 1902–1919, reprint Belgrade 1982–1988).
- 116 *Naptisi istorijske sadržine u zidnom slikarstvu*, tom prvi XII–XIII vek, Gojko Subotić, Bojan Miljković, Irena Špadijer, Ida Tot, urednik Ljubomir Maksimović, Vizantološki institut Srpske Akademije Nauka i Umetnosti, izvori, knjiga prva (*Inscriptiones historicae in picturis muralibus*, tomus primus saeculorum XII–XIII, Gojko Subotić, Bojan Miljković, Irena Špadijer, Ida Tot, recensuit Ljubomir Maksimović, Institutum Byzantinum Academiae Serbicae Scientiarum et Artium, fontes liber primus) (Belgrade 2015).

The Concept of Law

1 Roman and Byzantine Concept

Although the Byzantines based their entire legal and political tradition on Roman law, their concept of law (in the sense of *ius*) was essentially different from that which had been held by the Romans. In fact, the Byzantines had no general concept of law. The conception of *ius* as the body of legal rules forming the law (*droit, diritto, derecho, Recht*), inherited from the classical Roman tradition, had already been rejected in Justinian's time. To be sure, Justinianic professors translated the term *ius* into the Greek δίκαιον, but this translation has no practical significance. When a Byzantine lawyer says or writes νόμος καὶ δίκαιον, he means law (*lex*) and justice, not statute (*lex*) and law (*ius*). Furthermore, the term δίκαιον bears the meaning “a (subjective) right”. For example, the expression δίκαιον κληρονομίαν ἔχειν means “to have a right of inheritance”. The most important and central legal concept is that of νόμος, which means law in the sense of *lex*, behind which the imperial legislator (νομοθέτης) is always present.¹

It is obvious from the way in which they translate their predecessor's texts that the Byzantine lawyers were not acquainted with the general idea of law. For example, Ulpian thought that law (*ius*) was derived from justice since law (*ius*) is the art of good and equality (*ius est autem a iustitia appellatum: nam, ut eleganter Celsus definit, ius est ars boni et aequi*).² The editors of *Basilika* translated this as follows: ὁ νόμος ἀπὸ τῆς δικαιοσύνης ὠνόμασται; ἔστι γὰρ νόμος τέχνη τοῦ καλοῦ καὶ ἴσου.³ Thus *ius* is replaced by νόμος with the result that Ulpian's play on *ius–iustitia* is lost. The same occurs in the translation of another Ulpianic passage: “laws [*iura*] are not created for the individual but for everyone” (*iura non in singulas personas, sed generaliter constituuntur*).⁴ In this case a plural

- 1 D. Simon, “Zakon i običaj u Vizantiji” [“Law and Custom in Byzantium”], *APFB* 2 (1987), p. 145. Cf. S.N. Troianos, “Das Gesetz in der griechischen Patristik”, in *Das Gesetz in Spätantike und frühem Mittelalter*, 4. *Symposion der Kommission “Die Funktion des Gesetzes in Geschichte und Gegenwart”* (Göttingen 1992), pp. 47–62.
- 2 D. I, 1,1, *Corpus Iuris Civilis, volumen primum*, ed. Th. Mommsen (Berlin 1895, reprint Clark, New Jersey 2010), p. 1.
- 3 Bas. II, 1,1, *Basilicorum Libri LX, series A, volumen 1, textus librorum I–VIII*, ed. Scheltema, Van der Wall, and Holwerda, p. 15.
- 4 D. I, 3,8, ed. Mommsen, p. 6.

form *iura* (laws) is rendered νόμοι (statutes). The *Basilika* text runs: Οὐ περὶ τοῦ καθ' ἑκάστων, ἀλλὰ κοινῶς οἱ νόμοι τίθενται.⁵ In Byzantium, the principle of νόμος always took precedence over other legal rules. Down until the fall of the Byzantine Empire, Byzantine lawyers would make reference to “the law”, even when a specific statutory provision did not exist. There are also many provisions in legal documents indicating that everything should be done in accordance with statute (κατὰ νόμον). These formulations have led modern scholars to try to identify which statutes were being referred to. But in all these instances Byzantine lawyers and notaries had in mind what would be called “legality” or “the rule of law” and not any particular legal provision.⁶

2 Serbian Concept

As in Byzantium, the general concept of law in Serbia was not taken to be the Roman *ius*. Rather, the general legal concept in mediaeval Serbia was *zakon* (ЗАКОНЬ or ЗАКОНЬ), a term which in the modern Serbian language indicates the ultimate act of State power; it can be translated νόμος in Greek and *lex* in Latin, *Act* or *Statute* in English, *la loi* in French, *la legge* in Italian, *la ley* in Spanish, *das Gesetz* in German, and so on in other languages, whilst in other Slavonic languages it is virtually the same word. The term is of ancient derivation, being first mentioned in documents of the end of the 12th century.⁷ During the following centuries it can be found in numerous legal sources with one of two basic meanings: firstly as a legal rule in general (*regula iuris*) and secondly as the translation of the Greek νόμος, a law-making act of the Byzantine Emperor. In its first meaning it occurs in legal documents of Serbian origin, whereas in its second it can be found in Byzantine legal compilations translated and adapted for mediaeval Serbia.⁸

5 Bas. II, 1,19, ed. Scheltema, Van der Wal, and Holwerda, p. 17.

6 See S. Šarkiċ, “The Influence of Byzantine Ideology on Early Serbian Law”, *The Journal of Legal History* 13.2 (1992), pp. 147–154. Cf. Y. Vin, “Zakon poryadka trebuet: ponyatie ‘Zakon’ po materialam ekspertnoy sistemi ‘Vizantiyskoe pravo i akti’” [“The Law Demands the Order: The Concept ‘Law’ by Materials of Expert System ‘Byzantine Law and Acts’”], *Mir Pravoslavija* 10 (2019), pp. 43–95.

7 Such as Nemanja's charter to the monastery of Hilandar from 1198 and Saint Sabba's typikon (a set of regulations prescribing the administrative organization and rules of behaviour of a cenobitic monastery) for Hilandar of 1199. See Ćorović, *Spisi Svetog Save*, pp. 1 and 105 and Jovanović, *Sveti Sava, Sabrana dela*, p. 13.

8 The *Syntagma* of Matheas Blastares contains the chapter H, under the title *On the Law* (Ὁ ΖΑΚΟΝΕ), with the Roman lawyer's definitions of law, translated into Serbia from Byzantine

In the legal documents of Serbian origin, *zakon* indicated a generally obligatory rule (*regula iuris*) which was usually not a result of the activity of a monarch as ultimate holder of State power. Even where a law was made by a State authority, such a legal rule had primarily the appearance of a customary legal provision, regulating the condition within one particular manor (*vlastelinstvo*) rather than within the whole national territory. Otherwise such laws prescribed the legal position of different categories of inhabitants and identified particular rules of status. Sometimes a law would be introduced to regulate one particular problem. The concept of law in this period also includes a legal rule derived from custom or from a private contract. Each of these uses can be illustrated from many hundreds of cases from several sources.⁹

legal compilations and not from a Latin original (edition Novaković, p. 421). See S. Šarkić, "Νόμος et zakon dans les textes juridiques du xive siècle", in *Byzantium and Serbia in the 14th Century* (Athens 1996), pp. 257–266.

- 9 See S. Šarkić, *Zakon u glagoljskim i ćirilskim pravnim spomenicima (od XII do XVIII veka)* [Law in Glagolitic and Cyrillic Legal Sources (from the 12th to 18th Centuries)] (Novi Sad 1994, second expended edition Novi Sad 2015). The author has quoted all meanings of the term *zakon* that appear in Serbian legal documents. All provisions from Serbian legal sources which contain the title *zakon* (law, lex, νόμος), with a translation into a modern Serbian and comments, were edited by R. Mihaljčić, *Zakoni u starim srpskim ispravama* [Laws in Old Serbian Documents] (Belgrade 2006).

PART 2

The Law of Persons



Classification of Persons

Serbian legal sources show us that different types of status and legal rights enjoyed by persons were present at the end of the 12th century. In the charter of Stefan Nemanja issued to the Hilandar monastery we read the following: “And if anyone of the monastery’s serfs or Vlachs flee from the Great Župan or someone else, send them back: if Župan’s serfs come onto the monastery’s manor, send them back again” (И акѣ кѣто ѡдѣ манастирьскихѣхъ лѣди бѣжи, или Влахъ, подѣ великаго жѣпана, или кода инога кога, да се вракаю ѡпетъ, ако ли ѡдѣ жѣпанихѣхъ лѣди, прихѡде ѣ манастирьске лѡуди, да се вракаю ѡпетъ).¹ This means that peasants in Serbia had already lost their freedom of movement and that they belonged either to the Church or to the Great Župan (ruler) or to someone else (noblemen). In the Žiĉa chrysobull (χρυσόβουλλον),² King Stefan Nemanjić clearly marks the difference between noblemen (*vlastela*) and the “poor people” (Ѥбоги люди, *ubogi ljudi*). The King provided different punishments for the same trespasses depending on origin (противѡу родѡу) and dignity (противѡ санѡ). Even among noblemen the charter differentiated between the lords (властѣлы) and the other soldiers (воинникъ, probably lesser lords). The “poor people” were divided into priests (*popovi*, попове), Vlachs (Власи, singular = Влахъ, dependent shepherds) and serfs (in Serbian simply люди, людине, лѣдине, *ljudi* = people, *homines*).³

The abovementioned fragments leave no doubt that in 13th-century Serbia there existed several social classes with unequal legal status. In the 14th century, especially after the promulgation of Dušan’s Law Code, social inequality increased, and we can speak about four categories of persons: 1) noblemen (*vlastela*); 2) commoners (*sebri*); 3) townsmen (*građani*), and 4) foreigners (*stranci*).

1 Mošin, Ćirković, and Sindik, *Zbornik*, p. 69.

2 Generic name for several types of documents bearing the Emperor’s gold bulla; later, used to indicate solemn documents, even those without such a bulla.

3 Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

Noblemen (*Vlastela*, Властелин)

1 Name

Vlastela (noblemen) was the term that designated the privileged class in mediæval Serbia. Etymologically it comes from the word *vlast* (власть = power), so *vlastela* (singular = *vlastelin*, Властелинъ, *vir nobilis*) are those who have a power over another category of persons.¹ The first appearance of the word *vlastela* was in the *Nomokanon of Saint Sabba*, wherein the Greek expression ἄρχων was translated as *vlastel*, *boljar* and *knez*.² In the Žiča chrysobull (1220) the higher class is named *vlastela* (лице боуде ѡтъ властель), whilst all other inhabitants are considered as lesser ones (лице ли ѡтъ нижнихъ).³

The term became common in the first half of the 13th century. For example, Saint Sabba in his charter to the monastery of Saint Nicholas on the island of Vranjina (1233)⁴ speaks of *other noblemen* (ѡтъ прочихъ властель).⁵ King Vladislav, in a charter presented to the same monastery (between 1 September 1241–31 August 1242), mentions a *nobleman of mine* (мои властелинъ).⁶

In some Serbian sources the name *boljar* (бoлѣарь, бoларь) is used for noblemen. This word came from Bulgaria and, especially in Russia, designated the privileged higher class. It means someone who is better (Serbian *bolji*, Latin *miliores*, *optimatus unus*),⁷ but it can be found in literary texts more than in

1 See V. Mažuranić, *Prinosi za hrvatski pravno-povjestni rječnik* [Contributions for the Croatian Dictionary of Legal History] (Zagreb 1908–1922, reprint Zagreb 1975), pp. 1567–1588; Jireček and Radonjić, *Istorija Srba*, vol. II, p. 59; See also E.P. Naumov, *Gospodstvuyušči klase i gosudarstvenaja vlast v Serbii XIII–XIV vv.* [The Ruling Class and State Power in 13–14th Century Serbia] (Moscow 1975) and R. Mihaljčić, “Vlastela”, in *LSSV*, pp. 87–89.

2 N. Radojčić, “Vlastel u Zakonu gradskom Nomokanona sv. Save” [“Nobleman in Nomokanon of St. Sabba”], *Glas SANU* 113, *odeljenje društvenih nauka* 96 (1949), pp. 1–14. In the 13th century the ἄρχοντες were high-ranking officials in Byzantium, synonymous with μέγιστοι and δυνάτοι.

3 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 94–95.

4 Vranjina (Serbian Cyrillic Вранѣина, Albanian *Vraninë*) is an island in Skadar Lake (Serbian Скадарско језеро, Albanian *Liqen i Shkodrës*) in the Montenegrin municipality of Podgorica.

5 Mošin, Ćirković, and Sindik, *Zbornik*, p. 128.

6 Ibid., p. 163.

7 Mažuranić, *Prinosi*, p. 78. On *boljars* see S. Novaković, “‘Baština’ i ‘boljar’ u jugoslovenskoj terminologiji srednjeg veka” [“‘Baština’ and ‘Boljar’ in Yugoslav Terminology of the Middle Ages”], *Glasnik SKA* 92 (1913), pp. 248–255, and the article R. Mihaljčić, “Boljar”, in *LSSV*, p. 56.

legal documents. For example, in the treaty between King Radoslav and the city of Dubrovnik (4 February 1234) *my royal boljars* (ΚΤΟ ΛΙΘΟ WΔ ΒΟΛΛΑΡЬ ΚΡΑ-ΛΕΒЬСΤВА ΜΗ) were mentioned.⁸ The term can be found in the charter of King Dušan to the Hilandar monastery (February 1340)⁹ and in the list of the estate of the Holy Virgin monastery in Tetovo (1343).¹⁰ But in the Saint Stephen monastery charter and in the Dečani charter *boljars* are spoken about as a group of the monastery's serfs.¹¹ Generally, however, the term *boljari*, compared to the term *vlastela*, is rarely used in our sources.

In contrast to Serbian sources, Byzantine writers used different terms for Serbian noblemen. Constantine Jireček has highlighted that Emperor and historian John VI Cantacouzenos calls the most powerful noblemen in the Privy Council (Βουλή) of King Dušan τοὺς ἐν τέλει καὶ μεγάλα δυναμένους or τῶν ἐν τέλει τοὺς δυνατωτάτους. Jireček also noted that in Greek sources Serbian noblemen were also called “powerful” (δυνατοί), “magnificent” (μεγαλάνυμοι), illustrious and highborn.¹² Nikola Radojčić brought further attention to the riches of Cantacouzenos' terms used for Serbian noblemen, pointing at the following expressions: εὐπατριδαί, ἀρίστοι, τῶν πραγμάτων ἄρχοντες, δυνατοί, ἐπιφανεῖς, ἐν εὐγενείᾳ λαμπρυνόμενοι, σινκλητικοί. However, the term that was generally used was οἱ ἐν τέλει.¹³ Such an abundance of names used for Serbian noblemen came from the great, expressive potential of the Greek language and from the desire of Byzantine writers to show their classical education.

2 Social Status

The high social position of noblemen (*vlastela*) can clearly be seen from legal documents wherein the sovereign always mentions the noblemen beside his relatives. For example in the King Vladislav chrysobull to the church of Holy

8 Mošin, Ćirković, and Sindik, *Zbornik*, p. 130. *My boljars* are also mentioned in the treaty of Bosnian Prince (*ban*) Matej Ninoslav with Dubrovnik of 22 March 1240 (ibid., p. 154).

9 Edited by S. Marjanović-Dušanić and R. Subotin-Golubović, *SSA* 6 (2007), p. 57.

10 *Spomenici za srednovekovnata i ponovata istorija na Makedonija* [Sources for Mediaeval and Modern History of Macedonia], vol. III, ed. L. Slaveva, P. Miljković-Peppek, and Redactor in Chief V. Mošin (Skopje 1980), p. 290. Tetovo (Serbian Cyrillic *Тетово*, Albanian *Tetovë*, Turkish *Kalkandelen*) is a city in the northwestern part of North Macedonia.

11 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465; Ivić and Grković, *Dečanske hrisovulje*, p. 68.

12 Jireček and Radonjić, *Istorija Srba*, vol. II, pp. 21, 60.

13 N. Radojčić, *Srpski državni sabori u srednjem veku* [Serbian State Councils in the Middle Ages] (Belgrade 1940), pp. 293–294.

Virgin Bistrička (1234–1243)¹⁴ it is said: “That nobody has any power over everything that I gave to this church, neither my brother, nor my cousins, nor my other relatives, nor my noblemen” (ѡако да никто же не имать власти никоеже надъ сими дан’ними црькви сиени ни моя братиѡа, ни братоу’чедие, ни ини монродъ, ни мои властеле).¹⁵ In a charter of King Milutin to the Hilandar monastery (about 1300) we read: “And if any nobleman, or some of my relatives, enter [the monastery manor] and take something, let him pay to me, the King, twelve oxen” (И властелинь кто люво и ѡт соуродьникъ моихъ аке оу’лѣзе тамо и забавить что, да плати кралевъствоу ми .Ѧ. волни).¹⁶ At the end of 1331, King Dušan, in the treaty with Dubrovnik, ordered that no one can buy anything from the Ragusans without their consent. Among other things he also says “that nobody takes anything from them [Ragusans] without purchase, neither me the King, nor my royal cousin, nor any nobleman on my royal land” (да имь не ѡзме ница кралевство ми безъ кѡпа, ни кнезь кралевства ми, ни ки властелинь ѡ земли кралевства ми).¹⁷

The noblemen are mentioned in the sources among the court dignitaries as well. When giving lands and privileges to the monastery of Saint Nicholas on the island of Vranjina, King Vladislav says that no one will possess these lands: “neither my nobleman, nor my courtier” (да не има тоу ѡвласти ни мои властелинь, ни мои владальць).¹⁸ King Dušan used the same formula in his treaty with Dubrovnik from 1331 (ни кнезь кралевства ми, ни ки властелинь).¹⁹ Queen Helen said the same thing when giving some presents to the Saint Nicholas monastery on Vranjina (between 1277 and 1309), and she named her dignitaries *vladušti* (А отъ властель великихъ или малихъ и владѣщихъ прочихъ).²⁰ Confirming privileges to Ragusan merchants, on 10 January 1356, Emperor Uroš ordered that nobody was to obstruct the Ragusan trade activity “neither me, the Tsar, nor anyone of my noblemen, nor of any headman ... nor of any of the courtiers in my imperial state” (ни ѡдъ царства ми, ни ѡдъ коего властелина царства ми, ни ѡтъ ниєднога кнепаліє ... ни ѡтъ инога кога владѣцаго ѡ земли царства ми).²¹

14 The monastery was built in the valley of the River Lim (Serbian Cyrillic *Лим*), flowing through Montenegro, Serbia, and Bosnia and Herzegovina. Lim is the right and largest tributary of the Drina (Serbian Cyrillic *Дрина*).

15 Mošin, Ćirković, and Sindik, *Zbornik*, p. 167.

16 Ibid., p. 333.

17 Edited by D. Ječmenica, *SSA* 10 (2011), p. 22.

18 Mošin, Ćirković, and Sindik, *Zbornik*, p. 163.

19 Edited by D. Ječmenica, *SSA* 10, (2011), p. 22.

20 Mošin, Ćirković, and Sindik, *Zbornik*, p. 261.

21 Edited by M.A. Černova, *SSA* 8 (2009), p. 82.

3 Division

The nobles in mediaeval Serbia were not a homogeneous class. Their ethnic origin and social, political and economic positions were different, and therefore they could be divided into several groups.

Those persons that Serbian rulers called “my royal (or imperial) noblemen” (*vlastela kraljevstva* or *carstva mi*) were not always Serbs. Among the noblemen there were different nations, such as Greeks (Byzantines), Germans, Albanians, Latins,²² etc. In the charter of Queen Helen giving presents to the Saint Nicholas monastery on the island of Vranjina, the Queen said: “And from my lords, great or small ... whether Serb, or Latin, or Albanian, or Vlach” (А отъ властель великихъ или малихъ ... или є Србинь, или Латининь, или Арбанасъ, или Влахъ).²³ Article 173 of Dušan’s Law Code²⁴ starts: “Lords, greater and lesser, who came to my Imperial Court, whether Greek, German or Serb ...” (Властѣле и властѣлничикы кои гредоу оу дворъ царства ми, или гръкъ, или нѣмьць, или срѣбинь ...).²⁵ The Council in Krupašte²⁶ (2 May 1355) was in session in presence of all the “lords, Serb, Greek and Maritime” (и съ всѣми властели срѣбскими и гръчскими и поморскими).²⁷ Tsar Dušan’s charter to the Saint Nicholas monastery in Dobrušta²⁸ (c.1355) mentions Serbian and Greek noblemen (и съ всѣми властелі срѣбскимі и гръчскими).²⁹ In the charter of Tsar Dušan given to the Ragusan nobleman Maroje Gočetić (5 December

22 The term *Latin* was used by Orthodox people to refer to Roman-Catholics, in mediaeval Serbia especially for the Ragusans and inhabitants of the Adriatic coast towns (Kotor, Budva, Ulcinj, Bar, etc.).

23 Mošin, Ćirković, and Sindik, *Zbornik*, p. 261.

24 The numeration and the text of all articles quoted in this work are according to the edition of Stojan Novaković (see Chapter 2, note 54). The English text of all the articles quoted in this work is according to the translation of Malcolm Burr (see Chapter 2, note 81), with some exceptions that are indicated in the text.

25 Burr, “The Code of Stephan Dušan”, p. 533; Novaković, *Zakonik Stefana Dušana*, p. 135.

26 Krupašte (Serbian Cyrillic *Крупуште*), small village in North Macedonia, in the valley of the River Bregalnitsa (Serbian Cyrillic *Брегалница*).

27 Novaković, *Zakonski spomenici*, p. 429. New edition by M. Koprivica, “Povelja cara Stefana Dušana Hilandar za zabele Ponorac i Kruščicu i trg Kninac” [“The Charter of Emperor Stefan Dušan to the Monastery of Hilandar from ‘Zabel’ Kruščica, Ponorac and Town-Market Kninac”], *SSA* 15 (2016), p. 111. “Maritime” (*Pomorje*) was the name for the region on the Adriatic coast, south from Dubrovnik (now in Montenegro and partly Albania).

28 Dobrušta (Serbian Cyrillic *Добрушта*, Albanian *Dobruzhë*) was a mediaeval village in Kosovo (municipality of Prizren) that no longer exists.

29 Novaković, *Zakonski spomenici*, p. 719. New edition of the chrysobull by S. Mišić, “Hilendarski falsifikat hrisovulje Stefana Dušana za manastir Svetog Nikole u Dobrušti” [“Hilandar False Chrysobull of Stefan Dušan to the Monastery of St. Nicholas in Dobrušta”],

1355) we read as well: “that no one from my Imperial lords, whether Greek or Latin ...” (ДА НИ НИИ НИТКО УДЪ ВЛАСТЕЛЬ ЦАРЬСТВА МИ, НИ ГРЬКЪ, НИ ЛАТИНИНЬ).³⁰

In the Serbian mediaeval State, the differences between noblemen on the basis of their social, political or economic position were much more important than those based upon their ethnic origin. Some lords were ecclesiastical, but most were worldly noblemen. The sources speak of the great, small and lesser lords. Some lords had their manors as hereditary estates and some as fiefs. Using these criteria we can divide the noblemen class in three basic ways: a) *ecclesiastical and worldly lords*; b) *great, small and lesser lords*; and c) *hereditary estate holders and fief holders*.

3.1 *Ecclesiastical and Worldly Lords (crkvena i svetovna vlastela)*

Nikola Krstić, the first professor of legal history in Serbia, was the earliest modern historian to make use of this division between ecclesiastical and worldly noblemen. In his considerations on Dušan's Law Code, Krstić wrote that though the sources did not speak of such a division, it could be seen through reasoning. Krstić used special privileges as a criterion of belonging to the nobleman class. For this reason, he extended the name noblemen (*vlastela*) to members of the high clergy, although the sources only meant worldly lords by the term *vlastela*.³¹ According to the opinion of Teodor Taranovski the expression *vlastela* means only the worldly higher class: the Church and the clergy are something different, because the monasteries got the land from the monarch as the institutions, not as private persons (individuals).³²

Although in the majority of legal sources the name *vlastela* means the worldly lords, we consider that the abovementioned division could be accepted. First of all, the whole clergy was not within the privileged class. Lesser priests, as we shall see, belonged to the class of commoners (*sebri*), while the higher clergy enjoyed all the benefits of noblemen. Besides that, some sources (examples are rare, but still exist) under the term *vlastela* mean both

SSA 15 (2016), p. 132. According to the opinion of the editor, the chrysobull was found to be a false, originating around 1363–1365.

30 Edited by D. Ječmenica, SSA 12 (2013), p. 70.

31 N. Krstić, “Razmatranija o Dušanovom zakoniku” [“Considerations on Dušan's Law Code”], *Glasnik DSS* 6 (1854), pp. 112–121. Among modern authors, this division was adopted by D. Janković, *Istorija države i prava feudalne Srbije, XII–XV vek* [History of the State and Law of Feudal Serbia, 12th–15th Centuries] (Belgrade 1957), p. 42 sq.

32 T. Taranovski, *Istorija srpskog prava u nemanjićkoj državi I–IV* (Belgrade 1931–1935), vol. I, p. 12.

worldly lords and ecclesiastical dignitaries. The most remarkable example is King Milutin's charter to the Roman-Catholic church of Holy Virgin Ratačka (15 March 1306).³³ At the end of the charter it states:

And this favour created His Royal Majesty to the church of Holy Virgin Ratačka, when he came in the city of Kotor. And there were with His Majesty the King, the noblemen: Archbishop of Bar Marin, and purser Miroslav, and bishop of Hum John, and bishop of Zeta Michael, and headman Branko, and majordomo Miroslav, župan Vladislav, bishop of Kotor Dumunija, and two witnesses, Drago and Paul.

И тоу милость створи краљевство ми домоу Светыне Богородице Ретьч'скыне кьди приде оу Которь градъ. и тоу быше съ краљевствомъ ми властелие: дрьхнепискоупъ барьски Маринъ, и казньць Мирославъ, и епискоупъ хльмьские Ивандъ, и епискоупъ зетъскы Михаилъ, и чельникъ Бранко, дѣдъ Мирославъ, жоупанъ Владиславъ, епискоупъ котор'скы Доумѣниа и два свѣдока Драго и Павль.³⁴

Both worldly and ecclesiastical dignitaries, Roman Catholic and Greek Orthodox (purser, headman, majordomo, župan—archbishop, bishops) are clearly cited under the common name of *vlastela*. A similar example can be found in the list of the estate of the Holy Virgin monastery in Tetovo (about 1343), where Bishop Kalinik is mentioned among the other noblemen.³⁵ However, in Tsar Dušan's *prostagma*³⁶ to his Greek courtier George Phokopoulos, written in Greek, ecclesiastical and worldly lords are explicitly mentioned side by side (καὶ τῶν λοιπῶν ἀρχόντων τῆς βασιλείας μου καὶ τῶν ἐντιμοτάτων ἐκκλησιαστικῶν ἀρχόντων).³⁷

Normally, churches and monasteries got land as institutions, but in the sources we can see exceptions to this rule as sometimes members of the clergy

33 The ruins of the monastery are situated today on the Ratac (Serbian Cyrillic *Pamač*) peninsula, between the Montenegrin Littoral cities of Bar and Sutomore.

34 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 398–399. Taranovski, *Istorija*, vol. I, p. 12, took this text into consideration, but he wrote that this was only an exception that could not abolish the general rule, even if some other examples could be found.

35 Slaveva, Miljković-Peppek, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, pp. 289–290.

36 *Prostagma* or *prostaxis* (πρόσταγμα, πρόσταξις) or *horismos* (ὅρισμός, lit. “definition”) or *pit-takion* (πιττάκιον), synonymous terms designating an administrative order.

37 Solovjev and Mošin, *Diplomata graeca*, p. 74.

were given land as private persons. For example, on 19 May 1343 King Dušan gave to the Elder (*starac*) Grigorije, econom of the monastery of Saint Peter Koriški, a church in Koriša (village at Kosovo) as a life estate.³⁸ Also, in a charter of Despot John Uglješa from February 1369, when solving the judicial trial between the Zographou (Ζωγράφου) monastery and the bishop of Hierissos (Ἱερισσός, town in Macedonian Chalkidike), it was indicated that the bishop possessed the land as a private person.³⁹ The most remarkable example is the charter of Emperor Uroš, wherein he gave Saint Nicholas Stoški church with several serfs to Cyril, the Metropolitan (μητροπολίτης) of Melnik,⁴⁰ granted to his hereditary estate (May 1356). The text says that Cyril could dispose with the church during his lifetime, and after his death he could give it to the Church for the soul or grant it to anyone else (ДА СИ ІЄСТЬ ВОЛНЬ МИ ТЬ КΥРЬ ѠНОМЪЗІ ЦРЬКВОМЪ ДО СВОЕГѦ ЖИВОТА А ПО СМРЬТИ СВОЕИ ЛЮБИ ЗА ДѢШѦ ПОД ЦРЬКВЬ ПОДПИСАТИ А ИЛИ КѢМѢ ХАРИЗАТИ).⁴¹

The noblemen class in Serbia, as in other feudal countries, had administrative, financial and judicial immunity on their manors. The information that the sources provide us with concern mostly ecclesiastical manors, but we can suppose that the same legal position applied for worldly lords' manors. In the Saint George's monastery charter, for example, it is said that the Church was exempt from all taxes that normally should have been given to the King. No layman could judge the serfs belonging to the monastery, and none of the King's servants could enter a manor or collect taxes.⁴²

Still, differences between the worldly and ecclesiastical lords existed. According to article 42 of Dušan's Code worldly lords "shall pay the corn-due and provide soldiers to fight" (РАЗЕТЬ ДА ДАЮ СОЦЕ, И ВОИСКΟΥ ДА ВОЮЮ ПО ЗАКОНУ).⁴³ The corn-due (*soće*)⁴⁴ was collected from noblemen and commoners

38 With this document, the old church and its properties were donated to Grigorije, and after his death the land was to become property of Hilandar. A new edition of the chrysobull has been done by S. Mišić, *SSA* 12 (2013), pp. 21–29.

39 Solovjev and Mošin, *Diplomata graeca*, pp. 268–279.

40 Melnik (Bulgarian *Мелник*, Greek *Μελένικο*) is a town in Blagoevgrad Province in the southwestern Pirin Mountains in Bulgaria.

41 Edited by R. Mihaljčić, *SSA* 2 (2003), p. 88. Cf. R. Grujić, "Lična vlastelinstva srpskih crkvenih predstavnika u XIV i XV veku" ("Private Property Manors of Serbian Ecclesiastical Dignitaries in the 14th and 15th Centuries"), *Glasnik SND* 13 (1934), pp. 47–68.

42 Mošin, Ćirković, and Sindik, *Zbornik*, p. 317 sq.

43 Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 38; *Zakonik cara Stefana Dušana*, vol. III, p. 110 (edition of Serbian Academy for Sciences and Art).

44 About the meaning of the word *soće* see Chapter 5.

(*sebrī*), but the lord had to add one *perper*⁴⁵ or *kabao*⁴⁶ of corn and give it to the Emperor. These were two basic obligations that worldly lords had towards the King (Emperor). Besides that, when the Tsar travelled, nobles had to organize the transport: “Everyone shall provide for the Tsar wherever he goes. From every town to the district, from district to district. And again from district to town” (Цара въсакъ да диже коуда камо греде; градъ въсакы до жоупѣ, и жоупа до жоупѣ; и пакы жоупа до града).⁴⁷ Article 127 of Dušan's Code says: “Where a town or castle is overthrown, let the townsmen of that town rebuilt it and the district in which the town is situated” (Гдѣ се градъ ввори или коула, да га направѣ граждање тогази града и жоупа цю кѣтъ прѣдѣль тога града).⁴⁸ The lord's task was to supervise the rebuilding. The extraordinary aids (*auxilia*, *aide féodale*) that the Tsar's subjects (including worldly lords) owed him were defined by article 128 of the Code: “When the Lord Tsar hath a son to marry or a christening and hath need to build a court and houses, let every man help, both small [commoners] and great [nobles]” (Господинъ царь кѣди имѣ сына женити или крѣщеніе и боудѣ мѣ на потрѣбѣ дворъ чинити и коукіе да въсакъ поможе малъ и великъ).⁴⁹

45 The traditional gold currency of the Byzantine Empire had been *nomisma* (νόμισμα) or *solidus*, later called *hyperpiros* (Greek ὑπερπυρος, meaning gold *tried in the fire*), whose gold content had remained steady for seven centuries (3.5 grams of gold) and was consequently highly prized. From the 1030s, however, the coin was increasingly debased, until in the 1080s, following the military disasters and civil wars of the previous decade, its gold content was reduced to almost zero. Consequently in 1092 Emperor Aleksios I Komnenos undertook a drastic overhaul of the Byzantine coinage system and introduced a new gold coin, the *hyperpiros*. This was the same standard weight as the *solidus*, but of less gold content. Later on the quality of the coins declined, and in the 14th century their weight was far from uniform. At the end of the 13th century, when Venice and Florence started to mint their ducats and florins, their golden coins were equal to Byzantine *hyperpiros*, but in the 14th century, *hyperpiros* lost its value and was usually regarded as the equivalent of a half ducat. The name *hyperpiros* was adopted in various forms by Western Europeans (Latin *perperum*, Italian *perpero*) and Slavic countries of the Balkans (*perper*, *nepnep*). The *perper* was the Serbian money of account (Serbia did not have its own golden money, beside the Byzantine), and its value was 12 dinars. For example, a price for a horse in Dušan's epoch was c.10 perpers and for a female slave in Dubrovnik 10–12 perpers. On Serbian money, see the detailed study by V. Ivanišević, *Novčarstvo u srednjovekovnoj Srbiji* [Money Trading in Mediaeval Serbia] (Belgrade 2001). See also R. Čuk, “Novac”, in *LSSV*, pp. 441–444.

46 One *kabao* = 16 kg.

47 Article 60. Burr, “The Code of Stephan Dušan”, p. 210; Novaković, *Zakonik*, p. 50; *Zakonik cara Stefana Dušana*, vol. III, p. 114 (edition of Serbian Academy for Science and Art).

48 Burr, “The Code of Stephan Dušan”, p. 522; Novaković, *Zakonik*, p. 97.

49 Burr, “The Code of Stephan Dušan”, p. 522; Novaković, *Zakonik*, p. 98; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

Ecclesiastical manors were much more privileged than those of worldly lords. This is clearly declared by article 26 of the Code: “Churches situated on the lands of my Empire, My Majesty released from all seivices⁵⁰ both great and small” (Църкви въсе цю се въбрѣтаю по земли царства ми въсвободи царство ми вът въсѣх работъ малыхъ и великихъ).⁵¹ It means that the churches and monasteries did not have an obligation to pay the *soće* to the Emperor⁵² or provide soldiers to fight.⁵³

The judicial competence of ecclesiastical lords was also greater than the jurisdiction of worldly lords. They had the power of jurisdiction over their own serfs and slaves, as well as nobles, and they could judge all clerics and even laymen in matrimonial and hereditary matters.

Ecclesiastical manors could never be confiscated, unlike manors of a worldly lord, even in a case of high treason.

3.2 *Great, Small and Lesser Lords (velika vlastela, mala vlastela i vlasteličići)*

In mediaeval Serbia all noblemen held their manors as *tenants in capite*. This means that all lords were directly dependent on the monarch (Great Župan, King, Tsar), notwithstanding the big difference in their social, political or economic position. Though some lesser lords lived on Church manors, whose task was to protect a monastery and its monks from robbers, they were not vassals of the Church, but directly of the ruler. For example, Tsar Dušan granted the monastery of Saint Archangels with his lesser lord (*vlasteličić*) Novak Petziya, with his houses, vineyards, fields and mills (И приложи царство ми властеличича царства ми Новака Пецию съ дворми и съ виноградми, и с нивами,

50 *Rabota*, the general Slavonic word for compulsory, usually unpaid, day labour for the State or for one's lord (*corvée*), Greek ἀγγαρεία.

51 Burr, “The Code of Stephan Dušan”, p. 203; Novaković, *Zakonik*, p. 27; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

52 Already the Dečani charter prescribes that the *soće* has to be given to the Church (и соке да даю църкви). Novaković, *Zakonski spomenici*, p. 655; Ivić and Grković, *Dečanske hrisovulje*, p. 271.

53 Before the promulgation of Dušan's Law Code, some charters exempted the monasteries from war service. For example King Dragutin in his charter to the monastery of Hilandar (1276–1281) says that the monastery serfs have no duty to fight (не ходити на войскоу ни с кымъ; Mošin, Ćirković, and Sindik, *Zbornik*, p. 269). King Milutin gave the same privilege to the monastery of Saint Stephen in Banjska (Войске, ни града, ни сока; Mošin, Ćirković, and Sindik, *Zbornik*, p. 465) and Tsar Dušan to the monastery of Saint Archangels Michael and Gabriel (И да нѣ войске ни едномоу чловѣкоу църковьному; Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 112).

и съ МАНИИ).⁵⁴ Issuing a charter to the lesser lord Ivanko Probištitović (1350), Emperor Dušan named Ivanko as “Despot’s lesser lord” (ВЛАСТЕЛИЧНЮ ДЕСПОТОВЪ), although Ivanko got the rights of hereditary estate holder directly from Tsar, not from the Despot (probably John Oliver, one of the most powerful lords on Dušan’s court).⁵⁵

Regarding political and economic power, Serbian legal sources differentiate between great lords (*velika vlastela*), small lords (*mala vlastela*) and lesser lords (*vlasteličići*).

Great and small lords were mentioned for the first time in the King Uroš charter presented to the monastery of Saint Peter and Paul on the River Lim (1254–1262). The chrysobull, which confirmed the donations of the King’s grandfather Prince Miroslav,⁵⁶ was written in the presence of ecclesiastical dignitaries and my “royal noblemen, great and small” (и съ ВЛАСТЕЛИ ВЕЛИКИМИ И МАЛИМИ КРАЛЕВЪСТВА МИ).⁵⁷ Great and small lords, side by side, are mentioned three times in the Law Code of Stefan Dušan. The preface says that “this Code is established by our Orthodox Council, by the Most Holy Patriarch Kir Joanikije and by all archpriests and clergy, both small and great, and me, the true-believing Tsar Stephan, and all the lords of my Empire, both small and great” (СѦИ ЖЕ ЗАКОНЫКЪ ПОСТАВЛЯЕМЪ ОТЪ ПРАВОСЛАВНАГО СЪБОРА НАШЕГО, ПРЪВЪСВѢЩЕНЫМЪ ПАТРІАРХУМЪ КУРЪ ІВАНІКІЕМЪ, И ВЪСЪВМЫ АРХІЕРІИ И ЦРЬКОВНИКЫ МАЛИМЫ И ВЕЛИКИМЫ И МНОЮ БЛАГОВѢРНЫМЪ ЦАРЕМЪ СТЕФАНУМЪ И ВЪСЪВМІИ ВЛАСТЕЛИ ЦАРСТВА МИ, МАЛИМИ ЖЕ И ВЕЛИКИМИ). Article 121 begins as follows: “And no lord, either small or great” (ДА НѢСТЬ ВОЛ’НЪ ВЛАСТЪЛИНЪ НИ МАЛЪ НИ ВЕЛИКЪ). At the beginning of article 136, we read: “My imperial writ may not be disobeyed, to whomsoever it be sent, be it to the Lady Tsaritsa, or to the King⁵⁸ or to the lords, great or small” (КНИГА ЦАРСТВА МИ ДА СЕ НЕ ПРЪСЛАДША ГДѢ ПРИХОДИ ИЛИ КЪ ГОСПОЖДИ ЦАРИЦИ, ИЛИ КЪ КРАЛЮ ИЛИ КЪ ВЛАСТЪЛОМЪ ВЕЛИКИМЪ И МАЛИМЪ).⁵⁹

54 Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 90.

55 Edited by V. Aleksić, *SSA* 8 (2009), p. 73. On John (Jovan) Oliver see B. Ferjančić, *Despoti u Vizantiji i južnoslovenskim zemljama* [Despots in Byzantium and South-Slavic Countries] (Belgrade 1960), pp. 159–166.

56 Prince Miroslav (Serbian Cyrillic *Мирослав*), lord of Hum (modern Hercegovina), was the brother of the King’s grandfather, Stefan Nemanja.

57 Mošin, Ćirković, and Sindik, *Zbornik*, p. 227.

58 The King in the Code always means Dušan’s son, heir to the throne Uroš. See S. Ćirković, “Kralj u Dušanovom zakoniku” [“The King in Dušan’s Law Code”], *ZRV* 33 (1994), pp. 149–164.

59 Burr, “The Code of Stephan Dušan”, pp. 198, 520, 524; Novaković, *Zakonik*, pp. 6, 93, 103; *Zakonik cara Stefana Dušana*, vol. III, pp. 98, 132, 136 (edition of Serbian Academy for Science and Art).

We must note that the sources do not mark any difference in legal rights between the small and great lords. One can suppose that the great lords were more powerful, but the only legal privilege they had concerned summoning. It is said in article 62: “A greater lord shall not be summoned without the writ of the court, but others with the seal” (ВЛАТЕЛИНЬ ВЕЛІИ ДА СЕ НЕ ПОЗЫВА, БЕЗ’ КНИГЕ СОУДИНЕ А ПРОЧІИМЪ ПЕЧАТЬ).⁶⁰ This means that it had to be explained to greater lords why they were being summoned, while others had to come when an official merely showed them the imperial seal. Connected with summoning was also the privilege of great lords to be judged by their peers, as is clearly stated in article 152 of the Code: “so let great lords be jurors for a great lord, for middle persons their peers, and for commoners their peers” (ДА СЪ ВЕЛИМЪ ВЛАСТЬБЛОМЪ, ВЕЛИ ВЛАСТЬБЛОМЪ, А СРѢДНИМЪ ЛЮДЕМЪ ПРОТИВЪ ДРОУЖИНА ИХЪ А СЕБРЬДІАМЪ ИХЪ ДРОУЖИНА ДА СЪ ПОРОТНИЦИ).⁶¹ Judgment by peers is a very well-known institution that can be found across mediaeval legal systems.⁶²

It remains unclear who among the court dignitaries belonged to the great and who to the small lords. The sources mention only a “great lord with a standard” (ВЕЛИКА ВЛАСТЬБЛИНА СТЕГНОШЕ)⁶³ who was not a simple standard-bearer but an officer of high military rank.⁶⁴ We can suppose that the high courtiers,

60 Burr, “The Code of Stephan Dušan”, p. 210; Novaković, *Zakonik*, p. 51; *Zakonik cara Stefana Dušana*, vol. III, p. 116. Even in this case the Code does not oppose a great to a small lord, but to “others” (*proči*), including the small lords.

61 Burr, “The Code of Stephan Dušan”, p. 527; Novaković, *Zakonik*, p. 119; *Zakonik cara Stefana Dušana*, vol. III, p. 142. According to the opinion of Novaković (*Zakonik*, p. 238), “middle persons” (*srednjim ljudem*), opposed to the great lords, are small lords, merchants and citizens.

62 Cf. Magna Carta of 1215, article 39 (edited by J.C. Holt. London 1976, pp. 326 and 327): *Nullus liber homo capiatur, vel imprisonetur, aut disseisiatur, aut utlagetur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum vel per legem terre* (“No free man shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land”).

63 Article 155 of the Code. Burr, “The Code of Stephan Dušan”, p. 529; Novaković, *Zakonik*, p. 122; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

64 S. Novaković, *Stara srpska vojska* [Old Serbian Army] (Belgrade 1893), pp. 39, 57, 65, writes that “a great lord with a standard” was not a simple standard-bearer but an officer of high military rank who got a standard as a sign of his command over several military forces. Krstić, “Razmatranija o Dušanovom zakoniku”, pp. 115–116, compared “a great lord with a standard” with *barones banderiat* in Hungary, which means the most powerful lords who fought under their own flag. Taranovski (*Istorija*, vol. 1, p. 14) pointed at the Lithuanian Statute of 1529, which mentions *pani horugovnije*, great lords with a standard (*horugva*) who led their own forces, among whom were the lesser lords. However, the deficiency of sources does not allow a conclusion that the lords in Serbia led their own regiments.

who carried Byzantine titles, belonged to the great lords as well, but a lack of sources makes this only a hypothesis.

The lesser lords were the class that stood, from a social and political perspective, under the great and small lords. The Serbian word *vlasteličić* (ВЛАСТЕЛИЧИКЪ) is a patronymic, a name derived from the name of a father or ancestor. Constantine Jireček translated the word *vlasteličić* as “a son of a small lord” (“Sohn des kleinen Vlastelin”) and pointed out that in Dubrovnik the word has been translated as *zentilotto*.⁶⁵ In Greek charters issued by Serbian rulers, *vlastela* (noblemen) are called ἀρχοντες and *vlasteličići* (lesser lords) ἀρχοντόπουλοι.⁶⁶

The term *vlasteličić* was mentioned for the first time between 1277 and 1281, in King Dragutin's treaty with Dubrovnik, but it concerned the Ragusan merchants, not the Serbian lesser lords (СИКОВЪ МИЛОСТЬ СЪВОРИ КРАЛЕВЪСТВО МИ ВЛАСТЕЛИЧУКЕМЪ ДЪБРОВЪЧКИМЪ).⁶⁷ In the Law Code of Stefan Dušan, lords (*vlastela*) and lesser lords (*vlasteličići*) are listed one following the other, meaning that they both belonged to the same privileged class (articles 39, 142, 173).⁶⁸ They had the same responsibility for trespasses (articles 55, 142, 173) and enjoyed the same protection if commoners plundered their homes (article 144).⁶⁹ However, a difference in their legal status can be seen from article 50: “If a lord insult and shame a lesser lord let him pay one hundred perpers. And if a lesser lord insult a greater, let him pay one hundred perpers and be beaten with sticks” (ВЛАСТЪЛИНЪ КОИ УПЪСЪЈЕ И УСРАМОТИ ВЛАСТЪЛИЧКЪА ДА ПЛАТИ Р. ПЕРЬ-ПЕРЬ И ВЛАСТЪЛИЧНИКЪ АКО УПЪСЪЈЕ ВЛАСТЪЛИНА, ДА ПЛАТИ Р. ПЕРПЕРЬ И ДА СЕ БІЕ СТАПЉИ).⁷⁰

Lesser lords (*vlasteličići*) were a relatively numerous class of military nobles, and they might have come from “soldiers”, mentioned in the sources from the beginning of the 13th century. Stefan, the first Serbian King, in his *Life of Saint*

65 K. Jireček, *Staat und Gesellschaft im mittelalterlichen Serbien, I–III*, Denkschriften der Kaiserlichen Akademie der Wissenschaften in Wien, Phil. hist. Klasse LVI (1912), I, p. 44, and “Das Gesetzbuch des serbischen Caren Stephan Dušan”, *ASPh* 22 (1900), p. 214. Cf. R. Mihaljčić, “Vlasteličići” in *LSSV*, pp. 91–82.

66 Solovjev and Mošin, *Diplomata graeca*, pp. 32, 68, 74, 180 (ἀρχοντες); 68, 180 (ἀρχοντόπουλοι).

67 Mošin, Ćirković, and Sindik, *Zbornik*, p. 274. Until 1937, the charter was attributed to King Stefan the First Crowned (“Prvovenčani”).

68 Burr, “The Code of Stephan Dušan”, pp. 206, 525, 533; Novaković, *Zakonik*, pp. 39, 109, 135; *Zakonik cara Stefana Dušana*, vol. III, pp. 108, 138–140, 150.

69 Burr, “The Code of Stephan Dušan”, pp. 206, 525–526, 533; Novaković, *Zakonik*, pp. 47, 109, 111, 135; *Zakonik cara Stefana Dušana*, vol. III, pp. 114, 138–140, 150.

70 Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, pp. 43–44; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

Simon (hagiography of his father Stefan Nemanja) wrote that Nemanja had called to a Council (*Sabor*) in Ras⁷¹ “dukes and soldiers” (воеводи же и воины), but any legal distinction between them cannot be seen from the text.⁷² A difference in legal status between “lords, soldiers and poor people” (*vlatele, vojnika i ubogih ljudi*)⁷³ can clearly be seen from the Žiča charter: for unlawful divorce a lord had to give six horses, a soldier two horses and a “poor man” two oxen (Аще ли котори вбръщѣтъ се сию страшноу ю заповѣдь да прѣстоупае, симъ наказаниемъ да наказѣють се: аще ли котори боудеть вѣ власть, да оуземлетъ се на немъ кралю .S. конь; аще ли вѣтѣ инихъ воинникъ, да оузимають се на немъ по .В. коня; а аще ли вѣтѣ оубогихъ люди створить се, да оузимають се на нихъ по .В. воли).⁷⁴ The lesser lords usually held small manors from the monarch, usually one village (article 75 of Dušan’s Code), but the sources also mention cases when lesser lords had larger manors or even some small towns. Sometimes the monarch granted the lesser lord, together with his manor, to a monastery, as in the abovementioned example of Novak Petziya. Lesser lords very often lived on monastery manors and protected, as soldiers, a monastery and its superior (*igouman, hegoumenos*) from robbers. King Milutin, for example, ordered, in Saint George’s charter, the lesser lords Manota and Kalodurd “to work for the Church, according to the military law” (да работа цркви ѿ воиницьски законъ). This means that they had to serve the Church according to the rules of the military class with a privilege that their horses “do not carry cargo” (а да имъ се конь не товари ни товара да воде). The same charter mentions certain Hranča, who had “to be the soldier of the Church” (да ѣсть црковни воинникъ).⁷⁵ In January 1357, Emperor Uroš wrote to the Ragusans that he had sent his lesser lord Vukša to the market-town of Sveti Srd⁷⁶ to protect Ragusan merchants from every disturbance (И тамо смъ послаа влаетеличикѣ царства ми Влксѿ ѿ Свети Срѣгъ да стои и да ви чѣва и блюде вѣ, вѣсакѣ забаве).⁷⁷ However, the sources

71 Ras (Serbian Cyrillic *Рас*, Latin *Arsa*) is a mediaeval fortress in the vicinity of former market-place Staro Trgovište, some 11 km west from the modern day city of Novi Pazar in southern Serbia. Old Ras was one of the first capitals of the mediaeval Serbian State of Raška.

72 Jovanović and Juhas-Georgijevska, *Stefan Prvovenčani, Sabrana dela*, p. 50.

73 Greek πένητες.

74 Mošin, Ćirković, and Sindik, *Zbornik*, p. 94.

75 Ibid., pp. 324, 328.

76 Sveti Srd (Serbian Cyrillic *Свету Срдѣ*, Latin *St. Sergius*) was an important market-town in mediaeval Serbia on the left bank of the River Bojana, 10 km away from Skadar (Latin *Scodra*, Albanian *Shkodër*, Serbian Cyrillic *Скадар*, Italian *Scutari*, Turkish *İşkodra* or *Arnavut İşkenderiyesi*, today in Albania), near the Benedictine monastery dedicated to Saint Sergius and Bacchus.

77 Edited by M.A. Ćernova, *SSA* 9 (2010), p. 89.

also mention cases where some lesser lords tried to rob monasteries. In 1361, Emperor Uroš was visited by the superior John (КВР-ЮАНЬ) and the monks of the Hilandar monastery who complained to him of some lords and lesser lords disturbing them (... и говорише царьствоу ми како ихъ обиде властеле и властеличичи).⁷⁸

3.3 *Hereditary Estate Holders (vlastela baštinici) and Fief Holders (vlastela pronijari)*

The division of nobles between those who were hereditary estate holders and those who were fief holders was derived according to the content of the ownership rights on the land.

The hereditary estate holders had full and unlimited ownership rights on their manor (*baština*). The expression *baština* (БАШТИНА or БАЦИНА) comes from the Old Slavonic word *bašta* (БАЦА) = father, and indicates the hereditary estate (*očevina*), with reference to the real estate which passes from father to the heirs of his body (analogous to the Latin term *patrimonium*, derived from the word *pater* = father, as well).⁷⁹ The lord who was an hereditary estate holder could freely consume his property: sell it, give it as a present, or alienate it in any other way, as is unequivocally stated in the article 40 of Dušan's Code: "and they may be disposed of freely, submitted to the Church, given for the soul or sold to another" (ДА СЪ ВОЛ'НЫ НЫМИ И ПОД ЦРЬКОВЬ ДАТИ, ИЛИ ЗА ДОУШЪ ВДАТИ, ИЛИ ИНОМЪ ПРОДАТИ КОМЪ ЛЮБО).⁸⁰ *Baština* was a hereditary manor, and this was clearly pointed out in article 41: "If any lord have no child, or if he have it die, then upon his death the inheritance remains empty until there be found someone of his kin up to the third cousins, and to him shall the inheritance fall" (Кои властелины, не оузима дѣце, али пакы оузима дѣцѣ, тере оумрѣ, по еговѣ сымрѣти бащина поуоста остане, до где се вобрѣте вт негова рода до третїега братѣчеда тѣзїи да има еговѣ бащинѣ).⁸¹ However, according to article 48, "when a lord dies, his good horse and arms shall be given to the Tsar" (Кѣда

78 Novaković, *Zakonski spomenici*, p. 437.

79 See Mažuranić, *Prinosi*, pp. 45–48; P. Skok, *Etimologijski rječnik hrvatskoga ili srpskoga jezika* [Etymological Dictionary of Croatian or Serbian Language], ed. M. Deanović and Lj. Jonke, with the collaboration of V. Putanec, vol. 1 (Zagreb 1971), p. 120. Cf. R. Mihaljčić and S. Ćirković, "Bašta" and "Baština" and R. Mihaljčić, "Baštinik", in *LSSV*, pp. 30–34.

80 Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 36; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

81 Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 37; *Zakonik cara Stefana Dušana*, vol. III, p. 110. The phrase "up to third cousins" (*do tretiega bratučeda*) indicates the eighth degree of relatives.

оумръ властѣлинь, конь добръи и впоужѣ да се дае царѣ ...),⁸² a kind of *heriot* in the terms of English law.⁸³ Dušan's Law Code guaranteed to the hereditary estate holders security of property using the phrase "those patrimonies are confirmed" (баџине да сѣ тврѣдѣ).⁸⁴ The Emperor could deprive the hereditary estate holder of his manor "only in the case of high treason, and not for any other trespass" (развѣ едиње невѣре, а ни за единое нинь сѣгрѣшениѣ).⁸⁵

The institution of the fief came into Serbia from Byzantium and was named after the Greek word *πρόνοια* (*pronoia*), used in the Byzantine Empire from the 11th century.⁸⁶ The term *pronoia* was mentioned for the first time in Byzantine sources in the middle of the 11th century when Emperor Constantine IX Monomachos (Μονομάχος) gave the village of Mangana (Μάγγανα) as a fief to his prime minister Constantine Leichoudes (Λεικούδης), and for this occasion he issued an immunity charter (καὶ τὴν τῶν Μαγγάνων ἀνέθετο πρόνοιαν καὶ τὰ περὶ τὴν ἐλευθερείας αὐτῶν ἐνεπίστευσε ἐγγραφαί).⁸⁷ In Greek the word *πρόνοια* means *care*, *foresight*, *forethought*, *administration*, and in Church terminology *Providence*. The word attained its special meaning because the imperial government used to give small manors to be used (εἰς πρόνοιαν or κατὰ λόγον προνίας) and only the land acquired in that way was called *pronoia*.⁸⁸

Pronoia was mentioned in Serbia for the first time in the famous charter presented by King Milutin to the monastery of Saint George, near Skoplje. In

82 Burr, "The Code of Stephan Dušan", p. 207; Novaković, *Zakonik*, p. 42; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

83 For more details, see Chapter 14.

84 Articles 39 and 40. Burr, "The Code of Stephan Dušan", pp. 205–206; Novaković, *Zakonik*, p. 36; *Zakonik cara Stefana Dušana*, vol. III, pp. 108, 110.

85 Emperor's Dušan charter to the lesser lord Ivanko Probištitović from 28 May 1350. Edited by V. Aleksić, *SSA* 8 (2009), p. 74.

86 The most important works on *pronoia* are: G. Ostrogorski, *Pronija, prilog istoriji feudalizma u Vizantiji i južnoslovenskim zemljama* [Pronoia, Contribution to the History of Feudalism in Byzantium and South-Slav Countries], complete works of G. Ostrogorski, book 1 (Belgrade 1969), pp. 119–342; P. Lemerle, "Recherches sur le régime agraire à Byzance: la terre militaire à l'époque des Commènes", *Cahiers de civilisation médiévale* 2 (1959), pp. 265–281; A. Hohlweg, "Zur Frage der Pronoia in Byzanz", *BZ* 60 (1967), pp. 288–308; G. Ostrogorski, "Die Pronoia unter den Komnenen", *ZRV* 12 (1970), pp. 41–54; R. Radić, "Novi podaci o pronijarima iz prvih decenija XIV veka" ["New Data about Pronoiars from the First Decades of the 14th Century"], *ZRV* 21 (1982), pp. 85–93. On Serbian *pronoia*, see S. Novaković, "Pronijari i baštinici (spahije i čitluk sahibije), Prilog k istoriji nepokretne imovine u Srbiji XIII–XIX veka" ["Fief Holders and Hereditary Estate Holders, Contribution to the History of Real Estate in Serbia from the 13th–19th Centuries"], *Glas SKA* 1 (1887), pp. 1–102 = *Vaskrs države srpske i druge studije*, KJP 1 (Belgrade 1986), pp. 161–223.

87 Ioannis Zonarae *Epitomae historiarum*, ed. M. Pinder, III (Bonn 1897), p. 670, lines 7–9.

88 Ostrogorski, *Pronija*, p. 133.

the charter a certain Manota was mentioned, who acquired by dowry (при-
киа) the land of his father-in-law Dragota, in the place named Rečice. Later on,
King Milutin decided to give the whole area to the monastery of Saint George.
Making the revision of property rights on that territory, the King's servants
established the fact that Dragota's manor was not a hereditary estate (*baština*)
but a *pronoia* (fief), land held by military tenure (И Драготино мѣсто оу Рѣчи-
цахъ вѣрѣте се царьска прониа а на бацина Драготино). For this reason, Manota
could not acquire Dragota's land by dowry unless he accepted the military ser-
vice, as his father-in-law had.⁸⁹

The text of Saint George's charter clearly says that the fief holder (*pronijar*)
did not have full ownership rights over the land. He had *ius utendi*—the right to
use the property—and *ius fruendi*—the right to enjoy the fruits and profits of
the property. However, he did not have the most important right—*ius abutendi*
(the right to consume or destroy the property). A *pronoia* was land held by mil-
itary tenure, and it could be succeeded only when a fief holder's heir accepted
the military service. A fief remained always in the Tsar's *dominium*, and its ten-
ant had no right of ownership and could not sell it or alienate it in any other
way, as was strictly formulated in article 59 of Dušan's Code: "No man is free to
sell or buy a fief, who has not an hereditary estate. And no man may subject fief-
lands to the Church: and if they do so, it is not valid" (Пронию да нѣсть вол'нь
никто продати, ни коупити кто не има бацину. ѡт прониар'ске землѣ да нѣсть
вол'нь никто подложити под црьковь. ако ли подложи да нѣсть тврѣдо).⁹⁰

Though the legal documents clearly mark a juridical difference between the
hereditary estate (*baština*) and the fief (*pronoia*), it seems that in the practice
of the 14th century that difference was not clearly marked. This fact could be
seen in Dušan's Code: article 68 defining the amount of compulsory labours
due from the villagers (*meropsi*) speaks only about the services due to the fief
holder (*pronijar*) and not any lord (*vlastelin*). According to George Ostrogorski,
this only proves that in Dušan's Code the word *pronijar* (fief holder) replaced
the common term of feudal lord and that the relationships on manors, either
being a fief or a hereditary estate, were in fact similar.⁹¹

As all the lords in Serbia were *tenants in capite*, a fief was generally given to its
beneficiaries by the monarch himself. However, our sources show us an excep-
tion to that rule. We have a Greek chrysobull of Dušan's half-brother Simeon-
Siniša, lord of Thessaly (Θεσσαλία) and Epiros (Ἠπειρος), confirming in January

89 Mošin, Ćirković, and Sindik, *Zbornik*, p. 324.

90 Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 50; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

91 Ostrogorski, *Pronija*, p. 293.

1361 the estate of his great constable⁹² John Tzaphas Oursinos Doukas. Among the great constable's manors, the chrysobull mentions the village of Phiatza (τὴν Φιάτζαν), which John Tzaphas gave as a fief (δία προνοίας) to his nephew and namesake John Tzaphas.⁹³ This fact puts forward the question whether in Serbia a lord could give a fief (*pronoia*) to his vassal, rather than only the monarch being able to do this. Discussing this problem, Stojan Novaković has pointed out article 106 of Dušan's Law Code, where among the lord servants (*dvorani*) are mentioned *pronijarevići* (sons of a fief holder). According to Novaković this is proof that the great lords in Serbia had their own fief holders (*pronijari*), who were their soldiers, although there is no source confirming such a relationship.⁹⁴ We can accept the interpretation that a *pronijarević* was a son of a fief holder, but nothing proves that he had his own fief (*pronoia*). On the contrary, being poor, without his own fief, a *pronijarević* (son of a fief holder) would have been obliged to become a lord's servant.⁹⁵

It seems that the case of John Tzaphas and his nephew is the only example of a fief (*pronoia*) given by a lord to his vassal. However, as Ostrogorski said, this sole case cannot be the basis for a general conclusion. John Tzaphas was a nobleman of foreign origin, living in Epiros, a region that was under a strong Occidental influence, and where social relations were very different from Serbian ones. Even Simeon-Siniša, Dušan's half-brother and lord of Epiros, did not consider himself a Serb,⁹⁶ and Epiros and Thessaly under his rule were in fact separated from Serbia.⁹⁷

92 Μέγας κονοσταύλος or κονοσταύλος, a count of the stable, later commander-in-chief of cavalry (from Latin *comes stabuli* and French *connetable*). For more details on this function see Solovjev and Mošin, *Diplomata graeca*, pp. 463–464.

93 Solovjev and Mošin, *Diplomata graeca*, p. 234.

94 Novaković, "Pronijari i baštinici", p. 36.

95 Taranovski, *Istorija*, vol. 1, p. 38 says that if *pronijarević* (son of a fief holder) had his own fief (*pronoia*) he would not be called *pronijarević*, but *pronijar* (fief holder). Cf. Solovjev, *Zakonik cara Stefana Dušana*, p. 263, who adds that a fief (*pronoia*) could be inherited only by the eldest son. Other sons of a fief holder (*pronijarević*) did not want to work as commoners (*seabri*), so they entered into the service of the great lords, looking for an opportunity in war to become rich and acquire their own fief or hereditary estate. According to the author's opinion, that was the case of the lesser lord Ivanko Probištitović, who became rich being a Despot's servant, and bought lands and houses, which the Emperor confirmed to him as a hereditary estate.

96 His signature on charters was ΣΥΜΕΩΝ ΕΝ ΧΡΙΣΤΩ ΤΩ ΘΕΩ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΩΡ ῬΩΜΑΙΩΝ, Ο ΠΑΛΑΙΟΛΟΓΟΣ.

97 Ostrogorski, *Pronija*, p. 301. Cf. S. Šarkić, "Legal Position of Noblemen in Serbian Mediaeval Law", *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica*, tomus XXIII/1 (2005), pp. 111–121.

Emperor Dušan's Greek chrysobull from June 1352, to the monastery of Xenophontos (Ξενοφωντος) in the Holy Mountain, mentions "the land, held before by the knight Mouzakios in the area of Myriophytos" (τὴν γῆν, ἣν προκατεῖχε καβαλάριος ὁ Μουζάκιος ἐν τῇ τοποθεσίᾳ τοῦ Μυριοφύτου).⁹⁸ The Greek word καβαλάριος = knight (from Mediaeval Latin *caballarius* and French *chevalier*) designated in Byzantium and Serbia the honourable title for knights coming from West-European countries. However, it remained unclear whether Mouzakios' manor was a fief (*pronoia*) or hereditary estate (*baština*).

In the 15th century the threat of Turkish conquest caused the strengthening of the fief-system. That was the reason why fiefs were given not only to the lesser lords, but to the highest dignitaries as well.⁹⁹

98 Solovjev and Mošin, *Diplomata graeca*, p. 186. Cf. p. 448.

99 For examples, see Ostrogorski, *Pronija*, pp. 303–310.

Commoners (*Sebri*, СѢБРИ)

1 Name and Division

In the Serbian 14th-century sources *sebar* (СѢБРЬ, Russian сѣбр, Lithuanian *sebras*, Modern Greek σέμπρος = commoner) was the general word for anyone not of noble or gentle birth. The expression was mentioned for the first time in the Serbian translation of Matheas Blastares' *Syntagma*. Accepting the main distinction in the law of persons according to the Roman jurist Gaius, that all men are either free or slaves (*Et quidem summa divisio de iure personarum haec est, quod omnes homines aut liberi aut servi sunt*),¹ the Serbian translator says that among those who are free exist *počteni* (ПОЧТЕН'НИ, noble, gentle, honest, in Greek texts ἐντιμοί) and *sebri* (СѢБРИ), in the meaning of common, vulgar, low, base (εὐτέλεις in the Greek original).² In several articles (53, 55, 85, 94 and 106) of Dušan's Law Code a commoner (*sebar*) is opposed to a nobleman (*vlastelin*), providing different penalties for the same trespasses. It is said in article 85 of the Prizren transcript, besides the other things: "if he be noble let him pay one hundred perpers: and if he be not noble, let him pay twelve perpers and be flogged with sticks" (АКО БОУДЪ ВЛАСТЕЛИНЪ ДА ПЛАТИ .р. перперь; ако ли не боудъ властелинъ, да плати .вл. перперь и да се бѣе стапѣи).³ However, all other manuscripts of Dušan's Law Code replace the words "if he be not noble" with "if he be a com-

1 *Gai Institutiones*, I, 9. Gaius' division was accepted in *Epanagoge* (Ἐπαναγωγή = "Return to the point"), correctly *Eisagoge* (Εἰσαγωγή τοῦ νόμου = "Introduction to the Law"), a Byzantine legal miscellany from the 9th century, and in Greek translation the text is (*Epanagoge legis* xxxvii, 1, ed. J. and P. Zepos, *Ius Graecoromanum*, vol. II [Athens 1931, reprint Aalen 1962], p. 347): Τῶν προσώπων ἄκρα διαίρεσις ἐστὶν αὕτη· οἱ τῶν ἀνθρώπων οἱ μὲν εἰσὶν ἐλεύθεροι, οἱ δὲ δοῦλοι. Although they are very similar, there are differences between the Latin and Greek texts: Gaius says *summa divisio de iure personarum haec est*, while the *Epanagoge* (*Eisagoge*) phrases it as τῶν προσώπων ἄκρα διαίρεσις ἐστὶν αὕτη. In Old Serbian, the text runs as: ІѢже лицѣ крѣпниіе рѣздѣленіе, се ѣсть іако отъ чловѣк овы оубо соутъ свобод'ны, овы же рабы (*Syntagma*, edited by S. Novaković, p. 249).

2 Edited by Novaković, pp. 509–510. Cf. pp. 506 and 523. On the meaning of the word *sebar*, see S. Novaković, "Die Ausdrücke СѢБРЬ, ПОЧ'ТЕН und МЬРОГ'ШИНА in der altserbischen Übersetzung des Syntagma von Blastares", *ASPh* 9 (1886), pp. 521–523. Cf. S. Šarkić, "Divisione Gaiana delle persone in diritto medievale serbo", *Zbornik radova Pravnog fakulteta u Splitu* 43:3–4 (2006), pp. 355–360; Mažuranić, *Prinosi*, pp. 1295–1296; Skok, *Etimologijski rječnik*, vol. III, p. 210.

3 Burr, "The Code of Stephan Dušan", p. 214; Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. III, p. 122 (edition of Serbian Academy for Science and Art).

moner [*sebar*]. One may conclude that the expression *sebri* (commoners) was the general name for all dependent (mostly village) inhabitants of mediaeval Serbia. According to the opinion of Taranovski, the word *sebar* replaced the Old Serbian name for peasant—СРЪБЛЬ (Serb). That can be clearly seen from article 98 of Dušan's Code, speaking of commoner's plucking (*mehoskubina*), which was taken over from the chapter of the Gračanitza charter entitled "The Old Law for Serbs" (ЗАКОНЪ СТАРЫ СРБЛЮЕМЪ).⁴

Although being dependent inhabitants, all the commoners (*sebri*) did not have identical social status. The sources allow us to differentiate between several categories of commoners: villagers (*meropsi*); vlachs (dependent shepherds); *otroci* (a kind of slave); dependent craftsmen and so-called *sokalnici*; and parish priests.

2 Villagers (*meropsi*, МЕРОПСИ)

2.1 Name and Social Status

Dependent villagers in mediaeval Serbia were usually called *meropsi* (МЕРОПСИ, singular = *meropah*, МЕРОПЪХЪ, МЪРОПЪХЪ). The meaning of the word *meropah* cannot be precisely defined, but it probably comes from the name of the Thracian tribe Meropes (Μέροπες), who lived in the Rodope Mountains (today in Greece).⁵ The term *meropsi* became common in 14th-century sources, but in the texts from the 12th and 13th centuries different names are used for the villagers: *parici* (from Greek πάροιχοι = colonists, settlers, lit. "one who lives nearby", the general name for the dependent peasants in Byzantium from the 10th century through to the end of the Empire, analogous, but not identical, to the serfs of mediaeval Occidental Europe), *zemljani ljudi*, *zemaljski ljudi*, *zemljani* (literally "men of the land", really the agricultural labourers), *Srblji* (Serbs), or simply *ljudi* (people, singular = *čovek* or *človek*, meaning *man*).⁶ The expression *kmet* (К'МЕТ, from Latin *comes*, or Greek κώμη = village), which in

4 Taranovski, *Istorija*, vol. 1, p. 80.

5 Skok, *Etimologijski rječnik*, vol. 11, p. 409; N. Radojčić, "Iz istorije proučavanja naziva meropah" ["From the History of Studying of the Origin of Name Meropah"], *Južnoslovenski filolog* 18 (1949–1950), pp. 157–171; M. Blagojević, "Meropah", in *LSSV*, pp. 396–397.

6 See S. Šarkić, "Nation et humanité dans le droit médiéval serbe", in *Da Roma alla Terza Roma* (Rome 1992), pp. 63–71. Some legal documents, written either in Greek or Serbian, use the Greek word *χώρα* (*chora*, *χώρα*) = land, district, in the meaning of the assembly of the villagers (Solovjev and Mošin, *Diplomata graeca*, p. 24; Solovjev, *Odabrani spomenici*, pp. 129 and 170; Slaveva and Miljković-Peppek, *Spomenici na srednovekovnata i ponovata istorija na Makedonija*, p. 289).

modern Serbian and Croatian historiography denotes villager, serf or villein,⁷ was used in that meaning only once—in the charter of Emperor Stefan Dušan to the monastery of Hilandar from “zabel” Kruščica, Ponorac and town-market Kninac (2 May 1355), where we read: “and from serfs one krina”⁸ (и на к’метехъ кринуу).⁹ The legal sources, from Nemanja’s charter presented to the Hilandar monastery onwards, tell us that villagers (*meropsi*, *ljudi*) could belong either to the sovereign, to the Church, or to a nobleman.¹⁰ This triple division was confirmed by article 112 of Dušan’s Law Code, which says: “If any man escape from prison ... be he the Tsar’s man, or of the Church, or of the lord” (Кон ЧЛОВѢКЪ ОУТѢЧЕ ИСЪ ТЫМНИЦЕ ... ИЛИ ЕСТЬ ЧЛОВѢКЪ ЦАРСТВА МИ, ИЛИ ЦРЬКОВНЫ, ИЛИ ВЛАСТѢЛ’СКИ).¹¹

The *meropah* (villager) could dispose with his land, but his property right was, as Stojan Novaković suggests, a dependent hereditary estate burden with certain feudal duties.¹² The villager (*meropah*) could sell or alienate in any other way his land, provided that the supply of labour was maintained. This can clearly be seen from article 174 of the Code:

Workers on the land who have their own inherited property land, vineyards or purchased estate, are free to dispose of their own lands and vineyards, to give them as dowries, to give them to the Church, or to sell them, but there must always be a labourer on that place for him who is lord of that village. If there be no labourer in that place for him who is a lord of the village, the same lord is free to take the vineyards and the fields

7 The word *kmet* has different meanings in Slavonic languages. The oldest documents testify that a *kmet* was a member of the privileged class, a chieftain of a village, or even a judge. However, some sources from western parts of the Balkan Peninsula mention *kmets* as dependent villagers who work on a nobleman’s manor. For more details see Mažuranić, *Prinosi*, pp. 508–512; Skok, *Etimologijski rječnik*, vol. II, pp. 106–107, and R. Mihaljčić, “Kmet”, in *LSSV*, pp. 298–299.

8 *Krina* was a dry measure of capacity used for wheat. One *krina* had 24 *kabao* (16 kg). A *kabao* was a Serbian translation of the Byzantine measure called μόδιος.

9 Edited by M. Koprivica, *SSA* 15 (2016), p. 113.

10 See S. Šarkić, “Pravnoistorijska analiza Hilandarske povelje monaha Simeona (Stefana Nemanje)”, [“Legal-Historical Analysis of the Monk Simeon’s Charter Presented to the Monastery of Hilandar”], in *Peta kazivanja o Svetoj gori* [The Holy Mountain—Thoughts and Studies, Volume Five] (Belgrade 2007), pp. 93–101.

11 Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, p. 86; *Zakonik cara Stefana Dušana*, vol. III, p. 130. “The word translated *prison* is *tamnica*, literally, a dark place” (Burr, comment on article 112). See Đ. Đekić, “Tamnica”, in *LSSV*, pp. 725–726.

12 Novaković, *Zakonik*, p. 173.

Людіє земліане кон имаю свою бацинѣ, землю и виноградѣ, и коуплєнице, да сѣ вол'ни вт своих виноградѣ и вт землє оу прикію втдати или цркви подложити или продати; а винѣ да єсть работникѣ на том'зи мѣстѣ вно-мѣзи господарѣ чїє боудѣ село; аще ли не боудеть работникѣ на вномзи мѣстоу ономоу господароу чинє боудє село да єсть вол'нѣ оузети внєзїи виноградѣ и нивїє.¹³

Article 67 adds: “such payment men make and work that they do, so much land let them have” (како платоу плакіаю и работоу работаю, тако-зи и землю да дръже).¹⁴

Villagers were not allowed to leave their land, and this rule was already stated in Nemanja's charter to Hilandar. Article 201 of Dušan's Code provides: “If a serf flee anywhere from his lord to another land, or to the Tsar's, where his master find him, let him brand him and slit his nose and assure that he is again his, but let him take naught from him” (Меропьхѣ ако повѣгнє кѣде вт своего господара оу инѣ зем'ли или оу царевѣ гдѣ га вєрѣтє господарѣ нєговѣ, да га всмѣдїи и нос мѣ раз'пори и ѣм'чи да є впєтѣ єговѣ, а ницю да мѣ не оуз'мє).¹⁵ The social status of villagers did not change even in the 15th century. In a charter issued on 5 January 1407 to the monastery of Great Lavra (Μονή Μεγίστης Λαύρας) on Mount Athos, Despot Stefan Lazarević forbids the villagers (*meropsi*) leaving their manors (гдѣ кога чловѣка вт них находе, да га вращаю оу прѣдрєченнаа своя села, или хотєтѣ, или не хотєтѣ).¹⁶ However, as the Saint George's monastery charter says, the lord loses the right to claim his deserted villager if he spends “three years without a master” (кон єсть проводиль .Г. годица безѣ господарѣ); on the other hand, the right of the Church to claim its deserted man was never to be obsolete (да моу нѣтє старинє).¹⁷

In spite of these very strict suppressions, villagers (*meropsi*) ran away in great numbers, either abroad or onto other manors. Concerning escaping abroad, the maritime cities (Kotor, Budva, Bar, Ulcinj) and especially Dubrovnik were very attractive for villagers, as they could find there a relative exemption from feudal duties. In order to stop that practice, King Dušan gave on 19 May 1334

13 Burr, “The Code of Stephan Dušan”, p. 533; Novaković, *Zakonik*, p. 136; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

14 Burr, “The Code of Stephan Dušan”, p. 211; Novaković, *Zakonik*, p. 55; *Zakonik cara Stefana Dušana*, vol. III, p. 116.

15 Burr, “The Code of Stephan Dušan”, p. 539; Novaković, *Zakonik*, p. 146; *Zakonik cara Stefana Dušana*, vol. III, p. 280 (edition of Serbian Academy for Science and Art). We must note that article 201 appears only in the manuscript of Rakovac from the year 1700.

16 Novaković, *Zakonski spomenici*, p. 498; Mladenović, *Povelje i pisma despota Stefana*, p. 248.

17 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 326, 327.

the Cape of Ston (*Stonski Rt*) and peninsula of Prevlaka (today both in Croatia) to the Republic of Dubrovnik, demanding from the Ragusan authorities “not to receive any man from my royal land, except those from my royal men, who already lived in Ston and Rt” (И ѸТЪК’МИСМО СЕ МАГЮ СОВОМ, КАГѠ ДА НЕ ПРѢИМЪ НИЕДНОГА ЧЛОВѢКА ОД ЗЕМЛЕ КРАЛЕВСТВА МИ, ЛИХО УНѢХ’ЗИ ЛЮДИ КРАЛЕВСТВА МИ КОИХЪ ЗАСТАШЕ Ѹ СТОИѸ И Ѹ Р’ТѸ).¹⁸ However, escaping from one manor to another was much more common. Villagers were looking for manors where their social and economic position could be better. It seems that villagers often ran away from manors that belonged to worldly lords to monastery manors, because the Church lands did not have to provide soldiers to fight (article 26). On the other hand, in mediaeval Serbia there existed a permanent shortage of labour, so lords also sought to provide incentives to attract peasants to their manors. It seems as well that compulsory labours (*rabote*, РАБОТЕ)¹⁹ on the larger manors were lesser, so villagers from lesser lords’ manors ran away to great lords’ lands.

Ecclesiastical and worldly lords were often in dispute about deserted men, to the extent that the State power had to interfere on several occasions. King Stefan Dečanski, for example, in his chrysobull issued in April 1326 to the Episcopacy of Prizren, says the following: “And for the men who gave my royal majesty [to the Church] or my royal elder, and who ran away, let them get back, everyone on his place, and let no one support them, neither a lord, nor another church, not even me, the King” (И ЦЮ Ё ПРИДАЛО КРАЛЕВСТВО МИ ИЛИ РОДИТЕЛЬ КРАЛЕВСТВА МИ, ЛЮДИЕ КОИ СЕ СОУ ПРѢГНЕ РАЗЫШЛИ ДА СЕ ПОВРАКАЮ СВАКЫ НА СВОЕ МѢСТО, А НИКТО ДА ИХ НЕ ПОДРЪЖИТЬ, НИ ВЛАСТЕЛИНЬ, НИ ИНА ЦРЬКВЬ, НИ САМО КРАЛЕВСТВО МИ).²⁰ Dušan’s Law Code treats the problem of deserted villagers in several articles. Article 22 protects the lord’s serfs; it provided that the serfs (villagers, *meropsi*) deserting from the lord’s manor to Church land had to be sent back. The Code does not speak of the opposite case, probably because it rarely occurred that serfs would flee from Church lands to go onto those of worldly lords: “And serfs²¹ who live in the villages and hamlets²² of the

18 D. Ječmenica, “Druga Stonska povelja kralja Stefana Dušana” [“King Stefan Dušan’s Second Charter to the Ston Peninsula”], *SSA* 9 (2010), p. 53.

19 *Rabota* (РАБОТА, service) is the general Slavonic word for customary labour service, corresponding to the Greek word ἀγγραεία.

20 Edited by S. Mišić, *SSA* 8 (2009), pp. 17–18.

21 *Ljudije vlastelci*, lit. “lord’s people”.

22 The words translated as “villages and hamlets” are *selo* and *katun*. The former was the smaller administrative unit within the *župa* or district. The *katuns* were the summer huts of the Vlach and Albanian shepherds in the mountains. Burr, “The Code of Stephan Dušan”, p. 202.

Church, let them each go to his one lord" (И людѣ властѣл'цѣи, кои сѣде по црѣковныхъ селѣхъ, и по католунѣхъ, да походи вѣсакъ къ своему господарѣ).²³ In article 115 we read: "If any man receive another from another estate who shall have fled from his own lord or court, if he produce the Tsar's letter of pardon, it shall not be contradicted. But if he show no pardon, let him be sent back" (И кто естъ чѣга чловѣка прѣель ис тоужде земли, а онъ не побѣгль въ своего господара въ соудъ ако даа книгѣ милостнѣ царевѣ да се не потворѣи; ако ли нѣ дастъ милости да моу се врати).²⁴ However, in the second part of the Code (promulgated in 1354) Emperor Dušan solves this problem much more vigorously. With a solemn and resolute tone, article 140 orders: "My Majesty commands: No man may receive any man, neither I the Tsar, nor the Lady Tsaritsa, nor the Church, nor a lord, nor any other man whosoever may receive any man without my Imperial writ. And if he receive him, let him be punished as a traitor" (Повелѣва царство ми; никто ничѣга чловѣка да не прима; ни царство ми, ни господжа царица, ни црѣква, ни властѣлнѣ, ни прочѣи любо кто чловѣк да не прѣими ничѣга чловѣка безъ книгѣ царства ми; ако ли га кто прими такози да се каже кто любо како и невѣр'никъ).²⁵ It was obvious that the previous prohibitions did not stop villagers escaping. Therefore the Tsar had to strictly forbid all subjects from receiving deserted men and, for the first time, provide the following penalty: those who receive any man will be punished as a traitor (*nevernik*), meaning confiscation of the whole of their property: "And also in the market towns, county prefectures, and in the cities, if anyone receive any man, in the same way shall be punished and given up" (Такожде и трѣговѣ и кнезовѣ и по градовѣ чѣга чловѣка примѣ, такожде вѣразомъ да се кажѣ и вѣдадѣ).²⁶ For those lords who harboured foreign serfs before the Council in 1354 (when the supplementary Code was promulgated) "shall be tried by the first court, as is written in the first Code" (да се ицѣ прѣвымъ соудомъ, како пише оу прѣвымъ закон'никѣ).²⁷

23 Burr, "The Code of Stephan Dušan", p. 202; Novaković, *Zakonik*, p. 24; *Zakonik cara Stefana Dušana*, vol. III, p. 104 (edition of Serbian Academy for Science and Art).

24 Burr, "The Code of Stephan Dušan", p. 519; Novaković, *Zakonik*, p. 88; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

25 Burr, "The Code of Stephan Dušan", p. 525; Novaković, *Zakonik*, p. 108.

26 Article 141. Burr, "The Code of Stephan Dušan", p. 525; Novaković, *Zakonik*, p. 109; *Zakonik cara Stefana Dušana*, vol. III, p. 138.

27 End of article 164. Burr, "The Code of Stephan Dušan", p. 532; Novaković, *Zakonik*, p. 130; *Zakonik cara Stefana Dušana*, vol. III, p. 148. The words "as is written in the first Code", concerns article 115.

2.2 Feudal Duties

Although we suppose that the monarch and nobles generally exacted more service from villagers than the Church, and consequently that there was a general desire to migrate to ecclesiastical estates, we cannot precisely prove it. The remaining legal sources speak only of monastery serfs' duties, which were not equal on every manor.²⁸ For illustration we shall quote the obligations of devoting a portion of time and labour by villagers on three different monastery's manors.

- a) According to the charter issued by King Vladislav (between 1234 and 1243) to the church of Holy Virgin on the River Bistritza, the monastery serfs had the following duties: 1) to plough 7.5 *mats* (1 *mat* = 939.18 square metres),²⁹ what was equal to one day of working;³⁰ 2) to mow the hay until the work was done; 3) to reap for six days with the monastery providing food; 4) to do all other jobs ordered by the monastery prior; 5) to bring malt for beer, as much as the monastery's community needs; 6) to give on every Christmas one *uborak* (уборѣкъ)³¹ of hops; 7) to bring a bunch of pine-wood splinter that is used for firelighting (*breme luča*, брѣмѣ лочѣа); 8) to give six quern stones (žr'di, жрьди); 9) to give bread, made of one *kabao* (къбау) of corn (1 *kabao* = about 16 kg); 10) to give a lamb fur and one cord every year on Our Lady's Day fair; 11) to fish on holidays for the King and Archbishop as much as be ordered; 12) to give every tenth beehive.³²
- b) According to the charter issued by King Milutin to Saint Stephen monastery in Banjska (between 8 February 1314 and 12 March 1316) the villagers had to perform the following services: 1) to plough 8 *mats*; 2) to dig the

28 The most important works on villagers' feudal duties are: S. Novaković, *Selo* [Village], second edition with the supplements by S. Ćirković (Belgrade 1965); M. Wlainatz, *Die agrarrechtlichen Verhältnisse des mittelalterlichen Serbiens* (Jena 1903); R. Grujić, *Eparchiska vlastelinstva u srednjovekovnoj Srbiji* [Eparchical Manors in Mediaeval Serbia] (Belgrade 1932); I. Božić, *Dohodak carski* [Tsar's Tribute] (Belgrade 1956); M. Blagojević, *Zemljoradnja u srednjovekovnoj Srbiji* [Agriculture in Mediaeval Serbia] (Belgrade 1973); L. Margetić, "Bilješke o meropsima, sokalnicima i otrocima" ["Notes on Villagers, Sokalniks and Otroks"], *ZRPFNS* 25.1–3 (1991), pp. 91–115. Cf. Taranovski, *Istorija*, vol. 1, pp. 51–71, and Janković, *Istorija države i prava*, pp. 26–33.

29 S. Ćirković, *Mere u srednjovekovnoj srpskoj državi, Mere na tlu Srbije kroz vekove* [Measures in the Serbian Mediaeval State, Measures on Serbian Soil over the Centuries] (Belgrade 1974), p. 62.

30 According to the researches of Blagojević, *Zemljoradnja*, pp. 337–402 and 428–429.

31 *Uborak* is a kind of measure for cereals, but we do not know its value exactly. The word probably comes from Greek–Latin *amphora*. See Skok, *Etimologijski rječnik*, vol. III, p. 534 and Mažuranić, *Prinosi*, p. 1483.

32 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 166–167.

vineyard until Easter; 3) to mow hay for three days; 4) to plough one more mat in autumn using the monastery's food and to carry everything that ploughed; 5) to reap for three days; 6) to participate in the construction of a town; 7) to weed out the corn; 8) to do different jobs in the bakery; 9) to give every year malt and hops; 10) to give *oglav* (ѠГЛАВИ);³³ 11) to give every fifth beehive; 12) to give to the Church every year lamb leather.³⁴

- c) The chrysobull of Emperor Dušan to the monastery of Saint Archangels Michael and Gabriel (1348) contains the chapter "The Law for Serbs" (ЗАКОНЬ СРЪБЛІЕМЪ). It states that on this manor the villagers (Serbs) had the following duties: 1) to provide work from every house two days in the week, whatever the prior of the monastery (*iguman*, игоумень, from Greek ἡγούμενος) commands; 2) to plough and carry all the corn, with the monastery providing food; 3) to mow hay, as needed; 4) to work in the vineyard according to "the law in Studenitsa" (и винограда да тежіи всакъ по законуу како оу Студѣници);³⁵ 5) to give lamb leather and fur and 30 bundles of flax; 6) to give the tithe of corn or two dinars; 7) to carry wood on holidays; 8) to give pinewood splinter used for firelighting.³⁶

Differences in customary labour services (*rabote*) existed most probably on manors belonging to worldly lords too. An indication for such a conclusion can be found in article 68 of Dušan's Code, which begins with the words "The law for the villager on all land" (Мероп'хомъ законъ по вѣсон земли). This important clause represents the Emperor's desire to equalize the amount of compulsory labour due from a villager (*meropah*) through the whole territory of the State. Admittedly, the text also speaks of obligations due to the fief-holder (*pronijar*), but the term *pronijar* in the 14th century replaced the common term of feudal

33 The meaning of the word is not clear. F. Miklosich, *Lexicon palaeoslovenico-latinum* (Vienna 1862–1865), suggests that it could be Latin *capistrum* (*halter*).

34 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 464–465.

35 "The Law in Studenitsa" here refers to the particular legal rules which regulated the position of dependent inhabitants of the monastery Studenitsa (Serbian cyrillic Студеница) manor, established by a foundation charter issued by Stefan Nemanja. The text did not remain but it was reconstructed by S. Ćirković, "Studenička povelja i studeničko vlastelinstvo" ("Studenitsa Charter and Studenitsa Manor"), *ZFFB* XII-1 (1976), pp. 311–314. See also M. Blagojević, "Zakon Svetoga Simeona i Svetoga Save" ["Law of Saint Simon and Saint Sabba"], in *Sava Nemanjić—Sveti Sava, istorija i predanje* [Sava Nemanjić—Saint Sava, History and Tradition] (Belgrade 1979), pp. 129–166.

36 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, pp. 110–113. Cf. R. Grujić, "Ekonomsko-pravni odnosi sela i seljaka zadužbine cara Dušana, sv. Arhandela kod Prizrena u 14. veku" ["Economic and Legal Relations of Villages and Villagers on Tsar Dušan's Foundation, Monastery of Saint Archangels near Prizren in the 14th Century"], in *Naše Selo*, ed. M. Stojadinović (Belgrade 1929), pp. 35–38.

lord. After publishing the first half of the Code (including article 68) the same duties were demanded from monastery serfs, which can be clearly seen from Emperor's Dušan charter to the monastery of Hilandar, issued on 2 May 1355.³⁷

As article 68 equalizes the obligations of all villagers we shall quote it in its entirety:

The law for the villagers on all land. He shall work for two days in the week for the fief-holder and let him pay him one imperial perper in the year and let him cut his [lord's] hay with all his household one day and his vineyard one day; and if there be no vineyard, let him do other works for one day. And what a villager do, let him store it all and according to the law nothing else shall be taken from him.³⁸

This means that a villager (*meropah*) had to work 106 days in the year for his feudal lord and to pay one perper to the imperial treasury. From the final sentence we can see the Tsar's intention to stop abuses and arrange all duties according to the law: any surplus of products the villager (*meropah*) could take for himself (и цю оуработа меропыхъ тозѣи вѣсе да стежѣи) and nothing else, against the law, would be taken from him (а ино прѣзаконъ, ницю да мѣ се не оузме).³⁹

Besides the abovementioned services owed to their feudal lords, villagers had numerous obligations to the monarch (State power). The most important ones were the following:

- 1) To pay the Tsar's revenue, called *soće* (соке). The precise meaning and origin of the word remain unclear, although several hypotheses have been presented.⁴⁰ The tax could be paid in money (one perper) or be replaced

37 Novaković, *Zakonski spomenici*, p. 431.

38 Burr, "The Code of Stephan Dušan", p. 211.

39 Novaković, *Zakonik*, p. 55; *Zakonik cara Stefana Dušana*, vol. III, p. 118 (edition of Serbian Academy for Science and Art).

40 Novaković, *Zakonik*, p. 173, wrote that the Serbian word *soće* comes from the latin *soca*, *soccus* = plough. So, *soće* could be a land tax, given to the monarch, as a sign of recognition that the land is his property. Č. Mijatović, "Finansije srpskog kraljevstva, II. Izvori za finansijski dohodak u XIII i XIV veku" ["Finances of the Serbian Kingdom, II. Sources for Finance Revenue in the 13th and 14th Centuries"], *Glasnik SUD* 26 (1869), p. 214, found the similarity between *soće* and the Latin word *saccus* = purse, which was also a king's tax in some Occidental mediaeval States. Probably under his influence Novaković later on changed his mind and wrote that *soće* comes from the Byzantine tax called τῆς σακέλης. "*Soće i sokalnik u srednjovekovnoj Srbiji*" ["*Soće and Sokalnik in Mediaeval Serbia*"], *Godišnjica N. Čupića* 26 (1907), pp. 124–125. But, as Božić, *Dohodak carski*, pp. 34–35, pointed out, σακέλη was not a tax at all, but rather a compartment of the imperial treasury

by one *kabao* (16 kg) of corn. The deadline for delivery of wheat was Saint Demetrios' Day (Δημήτριος, in Serbian *Mitrov dan*, Митровъ дньъ, 26 October) and the second period was at Christmas (article 198).⁴¹ *Soće* was collected from every home, be it lord's or commoner's. Villagers paid *soće* to their feudal lord, who would then give it to the Tsar.

- 2) *Obrok* (Ѡброкъ, literally *meal*) or maybe *priselica* (присѣлица, прѣселица) was the duty of lodging and giving food to the monarch, his family, high court dignitaries and foreign ambassadors when they travelled through the country.⁴² The obligation was mentioned for the first time in the charter presented by King Vladislav (1234–1243) to the monastery of Holy Virgin Bistrička.⁴³ As *obrok* was a very hard duty for villagers, Dušan's Code tried to restrict it. Article 133 says: "An ambassador⁴⁴ proceeding from a foreign country to the Tsar, or from the Lord Tsar to his own lord, when he come to any village, let honour be done him, that he have enough; but he must only stay for dinner or for supper and go his way to another village" (Поклисаръ цю гредѣ изъ тѣгѣ землѣ къ царѣ, а или вѣдъ

(σέχρετον τῆς σακέλλης, σακέλλιον). Even the name σακέλλη the sources mention for the last time in 1145 (see F. Dölger, *Beiträge zur Geschichte der byzantinischen Finanzverwaltung besonders des 10. und 11. Jahrhunderts* [Leipzig 1927], p. 24), and it is hard to believe that the term, which thus disappeared in Byzantium in 12th century, could be accepted in Serbia in the 14th. Besides that, Byzantine sources translate *soće* as σιτοδοσία. See Solovjev and Mošin, *Diplomata graeca*, p. 304. Cf. S. Ćirković, "Jedan pomen soća na Peloponezu" ["A Mention of Soće on Peloponnese"], *ZRVI* 7 (1961), pp. 147–151, and M. Bartusis, "State Demands for the Billeting of Soldiers in Late Byzantium", *ZRVI* 26 (1987), pp. 116–117. Burr, "The Code of Stephan Dušan", p. 206 says for *soće*: "The word is the same as the Russian *socha*, which means both a two-shared plough and a plough-land. Cf. the *caruca* and the *carucate* of Domesday Book." See also the latest work on *soće* by M. Blagojević, "Soće—osnovni porez srednjovekovne Srbije" ("Soće—The Basic and General Tax in the Medieval Serbian State"), *Glas SANU, Odeljenje istorijskih nauka, knj. 11*, 390 (2001), pp. 1–44, who suggests that 1 *kabao* (tub) had a weight in wheat between 61.5 and 62 kilos.

- 41 Novaković, *Zakonik*, p. 146; *Zakonik cara Stefana Dušana*, vol. III, p. 278. According to the Julian (Orthodox) Calendar, Saint Demetrios' Day is on 8 November and Christmas on 7 January. Article 198 mentions among taxes *harač* (дѣръчъ), a Turkish poll-tax (*haraç*, from Arab *ḥarāğ*). It is clear that this is the work of a later copyst (from 1700) and that the word could not occur in the pre-Turkish days.
- 42 Many Serbian scholars called this duty *priselica*, mentioned by articles 57, 125, 155 and 156 of Dušan's Code. However, M. Blagojević, "Obrok i priselica" ["*Obrok* and *Priselica*"], *18* (1971), pp. 165–188, suggests that *priselica* (i.e. *preselica*, as Blagojević proposed reading it) was the common indemnity due to merchants and travellers attacked by brigands and thieves.
- 43 Mošin, Ćirković, and Sindik, *Zbornik*, p. 167.
- 44 The word translated as "ambassador" is *poklisar* from the Greek ἀποκρισιάριος. Burr, "The Code of Stephan Dušan", p. 523.

гасподина цара кѣ своемуу господинѣ; гдѣ прїидѣ оу чїе любо село да мѣ се чины чѣсть да моу не вѣсѣга довол'но; нѣ да вѣбдоуѣ или вечера, а да гредѣ напребѣда оу ина села). Article 194 in the Rakovac manuscript (189 in Novaković's edition) orders: "And the kennel-men, falconers, swineherds, wherever they go, nothing shall be given them" (И ѡдремь и соколаромь и свинаромь кѣде идѣ да имъ се ница не даѣ). However, article 183 of the Bisritza transcript (189 in Novaković's edition) says different: "Wheresoever the horses and dogs and sheep of the Tsar go, whatsoever is written in the Tsar's books shall be given them and naught else" (Коудѣ гредѣ кони и пси и станове царевы, цю имъ се пише оу книзе цареве да имъ се тѣ изьдасть а ино ница). It seems that the kennel-men, falconers and swineherds could enjoy the *obrok* only if they had the permission of the Tsar himself. Finally, article 110 says that "judges who travel about my dominions and in their own province may not take their maintenance by force" (Соудѣ коудѣ гредѣ по земли царства ми, и своен власти да несть вол'нь оузети вброка по силѣ).⁴⁵

- 3) *Pozob* (позобъ, from *zob* = oat) was the obligation of giving oats and hay to the King's or Tsar's horses, which were ridden by the monarch's retinue. Dušan's Law Code does not speak on this duty, but according to information given by some contemporary charters we can conclude that the Tsar wanted to limit the obligation of *pozob*. Tsar Dušan's chrysobull to the monastery of Saint Archangels Michael and Gabriel (1348) says that the village had to give one *krinu prevodnu* which came down to 24 *Emperor's kabao* (и да даѣ село кринуу прѣводьноу едноу, а оу кринѣ .кд. къбан царевы).⁴⁶

45 Burr, "The Code of Stephan Dušan", pp. 523, 537, 518; Novaković, *Zakonik*, pp. 101, 144, 84; *Zakonik cara Stefana Dušana*, vol. 111, pp. 136, 278, 128, vol. 11, p. 218 (editions of Serbian Academy for Science and Art). Byzantine writer Theodore Metochites (Θεόδωρος Μετοχίτης), who was travelled through Serbia several times in 1299 negotiating the marriage between Emperor Andronikos II's daughter Simonis (Σιμωνίς, in Serbian Simonida) and Serbian King Milutin, gave in his Ambassador's Report (Πρεσβευτικός) very precious information on *obrok*. He said that in a delegation that started from Constantinople was one Serb, who was wondering to himself where he would find food during the journey. Certainly, from the local population, said the Serb, because in his country they have to give food to ambassadors who travel through Serbia. However, Metochites told his Serb travelling companion that such a custom did not exist in Byzantium. Edited by K.N. Sathas, *Μεσσαωνική Βιβλιοθήκη I* (Venice 1872), p. 156 and L. Mavromatis, *La fondation de l'Empire serbe. Le kralj Milutin* (Thessaloniki 1978), p. 91. See also the Serbian translation with the comment by I. Đurić, in *VIIINJ*, vol. VI (Belgrade 1986), p. 84, n. 12.

46 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 112. As the fur-

- 4) *Gradozidanije* (from *grad* = town and *zidati* = to build) was the obligation to reconstruct towns and fortresses, regulated by article 127 of the Code: “For building towns. Where a town or castle is overthrown, let the townsmen of that town rebuilt it and the district in which the town is situated” (За града зиданіе; гдѣ се градъ wobри или коула, да га направѣтъ граждање тогазиѣ града и жоупа цю кѣтъ прѣдѣль тога града).⁴⁷ The burden of reconstruction would have been a heavy drain on the resources of townsmen, especially in sparsely populated districts, and therefore it was shared by the surrounding districts (*župa*), which enjoyed the protection of the city. The monastery manor’s serfs were exempt from this obligation, as some charters testify.
- 5) *Gradobljudenje* was the service of providing the guard in towns and on roads in order to protect merchants and travellers from brigands and thieves. The responsible person for the functioning of the guards was the *kephale* (κεφαλῆα, κεφαλῆα, prefect), appointed by the Tsar as his representative over the towns (article 157). “My imperial guards” (вѣци царства ми) are mentioned in Tsar Dušan’s charter to the monastery of Hilandar from 8 June 1355.⁴⁸ Alexander Solovjev suggests that this *bci* are identical to the Byzantine *tzakons*, regular city guards, submitted directly to the *kephale* (prefect) and who usually were mercenaries or hereditary soldiers.⁴⁹ If we accept this hypothesis, it would mean that in mediaeval Serbia, besides the serfs whose duty was to keep the towns and roads, there existed professional guards as well. In the charter of the nun Eugenia (Princess Militza, the widow of Prince Lazar) and her sons Stefan and Vuk presented to the Lavra (Λαύρα, a type of monastery) of Saint Athanasios

ther text of the charter says the villagers, besides oats, had to give some quantity of salt and several halters. All these duties together were considered as the *pozob*.

- 47 Burr, “The Code of Stephan Dušan”, p. 522; Novaković, *Zakonik*, p. 97. According to the story of Byzantine Emperor and writer John Kantakouzenos, Emperor Dušan brought in 1350, from whole his State, 10,000 workers (ἀρχιθορορουντων) in order to reconstruct the fortress of Berroia (Βέρροια). *Ioannis Cantacuzeni eximperatoris historiarum libri iv, graece et latine*, vol. I–III, ed. L. Schopeni (Bonn 1828–1832), vol. III, p. 124. See also *VIIINJ*, vol. VI, pp. 503, 506 and n. 454 (comment by B. Ferjančić).
- 48 Novaković, *Zakonski spomenici*, p. 428. New edition by V. Petrović, “Povelja cara Stefana Dušana Hilandar u selu Karbincima” [“The Charter of Emperor Stephan Dušan to the Monastery of Hilandar Regarding the Village Karbinci”], *SSA* 14 (2015), p. 108.
- 49 A. Solovjev, “Bci u Dušanovoj povelji g. 1355” [“Bci in Dušan’s Charter from the Year 1355”], *PKJIF* 6.2 (1926), pp. 187–188. However, in Tsar Dušan’s general chrysobull to the monastery of Hilandar, *tsakonstvo* (цаконство) was mentioned as the villagers’ regular duty of providing the guard. Edited by S. Mišić and M. Koprivica, *SSA* 14 (2015), p. 68. Cf. Đ. Bubalo, “B’ci”, in *LSSV*, p. 35.

on Holy Mountain (between 1 September 1394 and 31 August 1395), the duty of providing the guards is called *biglja* (БИГЛЯ).⁵⁰

- 6) Military service (*vojevanje*) was the duty of noblemen (article 42), but they had to gather a regiment of armed villagers or other commoners (the number was in dependence on their power) and put them at the disposal of the Tsar (King). Churches and monasteries were exempt from military service, so their serfs did not have to execute that duty, but they probably protected the monasteries as armed guards. Despot Stefan Lazarević in the charter given to the Lavra of Saint Athanasios on Holy Mountain (20 January 1427) says: “and if My Lordship should go to war, let them [monastery’s serfs] go with My Lordship” (АКО СЕ БИ СЛОУЧИЛО ГОСПОДСТВУЮ МИ САМОМОУ ГЛАВОМУ ПОКИ НА ВОИСКУ, И ВНИ ДА ПОГЮ З ГОСПОДСТВОМЬ МИ).⁵¹ This means that in the 15th century, with the increasing threat of Turkish attack, the monastery’s villagers had to perform military service too.

Although Dušan’s Code was intended to equalize the amount of compulsory labours due from villagers across the whole territory of the State, charters issued after the proclamation of the Code speak of other services unmentioned in the Code. For example, in two charters presented by Despot Stefan Lazarević to the monastery of Hilandar (8 June 1411) and Despot Đurađ Branković to the monastery of Saint Panteleimon, a Rus’ establishment on Mount Athos (1428), we find *voinica* (ВОИНИЦА), *voištatik* (ВОИЦАТИКЪ) and *unča* (ΟΥΝЧА) as the taxes provided for the maintenance of a mercenary army.⁵²

In the districts conquered from Byzantium we find a very complicated fiscal system. The Greek charters of Serbian rulers speak of different kinds of duties: some of them are of Serbian origin, some are unknown to the Byzantine sources, whilst most of them are taken, with some changes, from Byzantine legal documents.⁵³

Duties of Serbian origin can be found in the chrysobull of Tsar Dušan to the monastery of Holy Virgin in Likousada (in Thessaly) from November 1348: the Emperor exempts the monastery of all charges and taxes (not specifying them at all) “and from *pozob* and so-called *priselica*” (καὶ τῆς ποζοβίτζης καὶ τῆς λεγουμένης πρεσέλιτζας).⁵⁴

50 Novaković, *Zakonski spomenici*, p. 496; Mladenović, *Povelje i pisma despota Stefana*, p. 224.

51 Novaković, *Zakonski spomenici*, p. 500; Mladenović, *Povelje i pisma despota Stefana*, p. 260.

52 Novaković, *Zakonski spomenici*, pp. 466, 528. Cf. p. 531; Mladenović, *Povelje i pisma despota Stefana*, p. 193.

53 See Lj. Maksimović, “Poreski sistem u grčkim oblastima Srpskog Carstva” [“Fiscal System in Greek Districts of the Serbian Empire”], *ZRVI* 17 (1976), pp. 101–125.

54 Solovjev and Mošin, *Diplomata graeca*, p. 158. *Pozob* and *priselica* are two feudal duties very

In the ex-Byzantine territory, now under Serbian rule, we find some payments in kind, unknown to the Byzantine fiscal system, where all rates were collected in money. That is the reason why those payments in kind are mentioned only twice in the charters of Serbian monarchs. Firstly, in King Dušan's general chrysobull in favour of all monasteries on Holy Mountain from November 1345, the monasteries are exempted (among other) from "the demand of grain and cattle" (ἀπαίτησιν τοῦ σίτου καὶ τῶν ζώων).⁵⁵ Secondly, Tsar Dušan's chrysobull to the monastery Esphigmenou on Holy Mountain from December 1347 mentions the exemption of "corn income" (συνδοσίας γεννημάτων).⁵⁶ However, in the Greek charters of Serbian rulers, made upon the Byzantine model, to designate the taxes coming from grain income, the same technical terms as in the Byzantine charters, ζευγαράτικιον, σιταρχία,⁵⁷ are used. It is obvious that in the districts conquered from Byzantium, besides "grain taxes" (taxes coming from grain income), collected in money, there existed sometimes demands in grain as well.⁵⁸

Some of the demands that occur in the Greek charters of Serbian monarchs are similar to those in Byzantine charters, but with some differences, not only in the terms used for their designation but in their contents too. Βέλανίδιον (fee paid to be allowed to feed hogs with acorns in a forest), for example, mentioned in the chrysobull of Tsar Simeon (Siniša) to the Epirot nobleman John Tzaphas (January 1361), is βαλάνιστρον in the Byzantine charters.⁵⁹ Εξέτασις τοῦ ἀλλοτρίου ἄλατος ("control over somebody else's salt", probably the tax on salt, impor-

well known from Serbian legal sources. The meaning of *priselica* in the text of the charter (board and lodging for soldiers) is in accordance with the previous interpretations of that duty, contested by Miloš Blagojević, who thought that *priselica* was the common indemnity owed to the merchants and travellers attacked by brigands and thieves (see Chapter 5, note 42). However, Blagojević did not consider the Lykousada charter, and it is very hard to put his argument into accordance with the abovementioned information. Cf. B. Ferjančić, *Tesalija u XIII i XIV veku* [Thessaly in the 13th and 14th Centuries] (Belgrade 1974), p. 233, and Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", pp. 114–115 and n. 55.

55 Solovjev and Mošin, *Diplomata graeca*, p. 32.

56 Ibid., p. 114. The expression ἀπαίτησις was used in Byzantium to designate every demand in the most general sense. Συνδοσία meant a special obligation of a fiscal nature. See Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", p. 113 and n. 48.

57 Solovjev and Mošin, *Diplomata graeca*, pp. 442 and 491.

58 Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", p. 114. Maksimović suggests that this kind of demand could have the character of requisitioning for an army's needs (n. 52).

59 Solovjev and Mošin, *Diplomata graeca*, p. 236. On the different contents of this demand in Byzantium and Serbia, see p. 408.

ted into the monastery's manor), mentioned in Tsar Dušan's chrysobull to the monastery of Zographou on Holy Mountain (April 1346), could be connected with συστολή τοῦ ἄλλοτρίου ἀλατος of the Byzantine charters.⁶⁰ Ἐξέλασις ἀνθρώπων (preparing of men for military service) from Tsar Dušan's chrysobull to the monastery of Xenophontos on Holy Mountain (June 1352) represents a more common way of exacting services of Byzantine charters: Ἐξέλασις πεζῶν (preparing of infantry), Ἐξέλασις κονταράτων (preparing of spearmen) and Ἐξέλασις πλωίμων (preparing of ships).⁶¹ Finally, in the Greek charters of Serbian rulers twice, and in the Byzantine charters once, we find demands of a local character called γουβελιατικός or corrupted κουβαλιατάκια,⁶² the meaning of which is unknown today.

This was not the end of labours and services due from the villagers, both in the Serbian parts of the Empire and the districts conquered from Byzantium. The list of demands of a local nature is very long, and it is impossible to quote them all.⁶³ Besides that, the possibility of introducing new demands always existed. That is clearly said in King Dušan's general chrysobull of all Holy Mountain monasteries: "no tribute will be ever demanded from the estates of the honourable monastery's communities on Holy Mountain Athos, neither from those which were asked and collected before, nor from existing ones, nor even from those which will be in future invented and collected" (οὐδὲ ἀπαιτεῖν ποτε ἀπὸ τῶν τοιούτων κτημάτων τῶν κατὰ τὸ ἅγιον καὶ σεβάσμιον ὅρος Ἄθω σεβασμίων μονῶν κεφάλαιόν τι καὶ ἀπαιτήσιν οὔτε ἀπὸ τῶν πρότερον ἐνεργουμένων καὶ ἀπαιτουμένων, οὔτε ἀπὸ τῶν νῦν, οὔτε ἀπὸ τῶν ἐσύστερον ἐπινοηθησομένων καὶ ἐνεργηθησομένων).⁶⁴

60 Ibid., p. 68. Cf. pp. 388–389.

61 Ibid., p. 188. Cf. p. 433. See also Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", p. 115 and n. 58.

62 Serbian charters: 1) Tsar Dušan's chrysobull to the monastery of Vatopediou on Holy Mountain from May 1346 (Solovjev and Mošin, *Diplomata graeca*, p. 80); 2) Tsar Dušan's charter to the monastery Xenophontos on Holy Mountain from June 1352 (ibid., p. 188). The only Byzantine document is the charter of Emperor John v to the monastery of Hilandar from 1351 (*Actes de Chilandar*, ed. L. Petit, vv 17 (1911), № 138, p. 59). On the different interpretations of the meaning of γουβελιατικός see Solovjev and Mošin, *Diplomata graeca*, pp. 415–416. Cf. Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", pp. 113–123.

63 On other demands of a local nature, see Maksimović, "Poreski sistem u grčkim oblastima Srpskog Carstva", pp. 113–123.

64 Solovjev and Mošin, *Diplomata graeca*, p. 34.

2.3 *Right to Be Protected*

For understanding the social rights enjoyed by villagers (*meropsi*), extraordinary importance has to be attached to article 139 of Dušan's Code. Therefore we shall quote it in its entirety:

No master may do to a serf within the territories of my Empire anything that is contrary to the law, save only what I have written in the Code. That shall they do and give. And if he do anything to him against the law I enact, every serf is free to lay plaint against his master, be it the Tsar, or the Lady Tsaritsa, or the Church, or my lords or any man. No man is free to withhold a serf from my Imperial Court, only the judges shall judge him according to right. And if the serf win against his master, let my judge give warranty that this master pay all to the villein at the appointed time, and that his master do no evil to the villein after the sentence.

Мѣроп'хомь въ земли царства ми да нѣсть вол'нь господарь оучинити прѣ-
законъ ница; развѣ цю естъ царство ми записало ѿ законнице, този да
мѡ работа и дава; ако ли моу оучини цю безакона, повелѣва царство ми,
въсакы мероп'хъ да естъ вольнь прѣти се своимъ господаромъ, или съ цар-
ствоми, или съ господомъ царицомъ, или съ црьковомъ, или съ властѣли
царства ми; и с кымъ любо да га нѣсть вол'нь никто дръжати вѣт соудѣ
царства ми; развѣ да мѡ соудѣе соудѣ по правдѣ; и ако ѡпри мѣроп'хъ госпо-
дара, да оуем'чи соудѣа царства ми, како да плати господар мѣроп'хѡ въсе
на рокъ; и потомъ да нѣсть вол'нь вѣн'зи господарь оучинити зло мѣроп'хѡ.⁶⁵

This means that the feudal master could demand from their serfs only what the Tsar had written in the Code. On the contrary, a villager could sue his lord, be it the Tsar himself, the Lady Tsaritsa, the Church or any nobleman. If the villager won against his master, the Imperial judge had to guarantee that the lord would pay all at the appointed time and that he would do no revenge to the villein.

It seems that Tsar Dušan, by introducing article 139 into his Code, wanted to protect villagers from the abuses of the Church and noblemen. The main reason was, probably, the aforementioned deficit in manpower. Besides that, article 139 shows the basic goal of the Code, to which most of its articles are devoted: regulating all social relations by law. It remained only a question of whether this provision was applied, and to what extent, that is to say, whether

65 Burr, "The Code of Stephan Dušan", p. 524; Novaković, *Zakonik*, p. 106; *Zakonik cara Stefana Dušana*, vol. III, p. 138 (edition of Serbian Academy for Science and Art).

the proclaimed principle of lawfulness was really respected. In the absence of any surviving legal decisions, the only reliable material that could solve these questions, we cannot give an exact answer on this point.⁶⁶

3 Dependent Shepherds—Vlachs (Власи, Βλάχοι)

3.1 *Name and Way of Life*

In mediaeval Serbia, the term *Vlachs* (Serbian *Vlasi*, Власи, singular = *Vlah*, Влах, in Greek documents Βλάχοι) designated first of all dependent shepherds, who were, besides *meropsi* (villagers, serfs) the most numerous category of the rural population. The word *Vlach* comes from the name of some Celtic tribes, those that the Romans called *Volcae* and Germans *Walhos*. In German the expression became common for all Celts, and after the romanization of Gaul, for all Romans. South Slavs took the name *Vlach* from Germans and used it for the native population of Roman origin, who lived in littoral cities and the Balkan mountains. The expression *Vlach* (Vlah, Влахъ) was used sometimes by Serbs for Ragusans, such as in the treaty between the Serbian Great Župan Stefan Nemanjić and the city of Dubrovnik (Ragusa), from 1214–1217, surviving in two versions (Serbian and Latin). The Serbian text is as follows: И ДА НЕ ЕМЛЕ СРЪБЛИНЬ ВЛАХА БЕЗЪ СЪДА (“It is forbidden to the Serb to capture a Vlach with no trial”), which was translated into Latin as *et ut Sclavus non apprehendat Raguseum sine iudicio*.⁶⁷ However, as time went by, the Roman population in mountains was slavized. As their main occupation was cattle raising, the name *Vlachs* (*Vlasi*, Власи) in mediaeval Serbia meant, mostly, shepherds. On the contrary, the Slavonic (Serbian) population was increasingly engaged in agriculture, so the term *Serb* (*Srbin*, СРЪБЛИНЬ, СЕРБАНИНЬ, СРБИНЬ) was identified with labourers. In 14th-century charters (Saint Stephen’s, Dečani’s, Saint Archangels’) the names Serbs (*Srbi*, СРЪБИ) and Vlachs (*Vlasi*, Власи) did not designate ethnic groups, but the dependent labourers (Serbs) and the shepherds (Vlachs). Under the expression *Vlachs* was also meant some groups of Romanic peoples, especially Rumanians.⁶⁸

66 See S. Šarkić, “The Legal Status of Villagers in Mediaeval Serbia”, in *Acta Universitatis Szegediensis, Acta Juridica et Politica, Tomus LXXV, Ünnepi kötet, Dr Blazovich László Egyetemi tanár 70. Születésnapjára* (Szeged 2013), pp. 578–590.

67 Mošin, Ćirković, and Sindik, *Zbornik*, p. 87. In the same meaning the term was used in four treaties of the Bosnian Prince (*Ban*, БАНЬ) Matej Ninoslav with the city of Dubrovnik from 1232–1235, 1235–1236, 22 March 1240 and March 1249. See *ibid.*, pp. 140, 142, 154 and 182–183.

68 During the Turkish occupation, the Turks called Serbs *Vlasi*. Today the Muslims from Bos-

From the end of the 12th century the Vlachs changed their way of life: former nomads settled in hamlets called *katuni* (КАТОУНИ, singular = *katun*, КАТОУНЬ).⁶⁹ Serbian legal documents make clear the difference between labourers' villages and Vlachs' hamlets (*katuni*). It could be seen from the beginning of Tsar Dušan's charter presented to the monastery of Saint Archangels Michael and Gabriel (1348): the Tsar gives to the monastery "villages and manors, and Vlach's hamlets" (села и мѣтохѣ и катоуны влашкыихъ).⁷⁰

Vlachs spent only the wintertime in their hamlets. During the summer they migrated onto the manor to which they belonged in order to graze their cattle. Wandering from one pasture to another, Vlachs stopped for rest in some labourers' villages, which were obliged to offer them lodging (*prestajanje*). As this duty was hard for villagers, article 82 of the Code ordered: "When a Vlach or Albanian stays in a village, other herdsmen who come after them may not stay in the same village. And if any one stay by force, let him pay a fine and for grass he has consumed" (Гдѣ прѣстои влэхъ, или дрѣбанасинъ на селѣ; на томъ зѣи селѣ да не прѣстои дрѣгы гредѣ за нимѣи. ако ли по силѣ стане, да плати пот'кѣ, и цю ю испасаль).⁷¹ The Tsar's intention was to distribute equally the duty of *prestajanje* (lodging) on all villages in the Empire.

Although the majority of Vlachs lived in hamlets (*katuni*), Saint Stephen's chrysobull (1313–1316) mentions Vlachs who have their villages (и к'то села имамю).⁷² This means that in mediaeval Serbia some Vlachs changed their occupation and became agricultural workers, living in their own villages.

Vlach's hamlets (*katuni*) kept some elements of autonomous organization from the earlier clan system, in spite of the fact that Vlachs were legally com-

nia call Christians *Vlasi*. On some Dalmatian islands the populations of certain cities are called *Vlasi*, as well as the inhabitants of Istria (in Croatia). In Hungarian, the word *Olasz* (coming from *Vlasi*) means "the Italians". See Skok, *Etimologijski rječnik*, vol. III, pp. 606–609, and Mažuranić, *Prinosi*, pp. 1584–1586. Cf. Z. Mirdita, *Vlasi u historiografiji* [Vlachs in Historiography] (Zagreb 2004) and P. Năsturel, "Les Valaques balcaniques au X–XIII siècles", *Byzantinische Forschungen* 7 (1979), pp. 89–112.

69 According to the interpretation of N. Jokl, *Linguistisch-kulturhistorische Untersuchungen aus dem Bereiche des Albanesischen* (Berlin 1923), pp. 172 and 320, the word comes from Albanian *katund-i*, meaning *Gebiet, Dorf, Stadt* (district, village, town). In modern Albanian, the word *katund* means village (the other name for village is *fshat*, coming from Latin *fossatum*). Some scholars think that the word is of Greek origin (κατοῦνα). See Skok, *Etimologijski rječnik*, vol. II, p. 64.

70 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 88.

71 Burr, "The Code of Stephan Dušan", p. 213; Novaković, *Zakonik*, p. 65; *Zakonik cara Stefana Dušana*, vol. III, p. 122 (edition of Serbian Academy for Science and Art).

72 Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

moners (*sebri*) and had feudal lords.⁷³ This can already be seen from the oldest Serbian legal document: a charter presented by Stefan Nemanja to the monastery of Hilandar (1198–1199). Listing all the goods that he gave to the monastery, among others, Nemanja says: “and from Vlachs the judiciary of Rade and Đurđe, and total 170 Vlachs” (А ѡД ВЛАХЪ РАДОВО СУДЪСТВО, И ЋДРЪГЕВО. А ВСЕГЕ ВЛАХЪ .Р.О.).⁷⁴ This means that Nemanja gave to Hilandar 170 Vlachs whose chiefs were Rade and Đurđe, who had the right to act as judge in some matters to their shepherds. What kind of jurisdiction they had remains unclear. Article 146 of the Code mentions prefects (*knezovi*), lieutenants (*premićurije*), bailiffs (*vladalci*), reeves (*predstajnici*) and headmen (*čelnici*), “who administer villages and mountain hamlets” (ТАКОЖДЕ КНЕЗОВѢ И ПРѢМИКУРІЕ, И ВЛАДАЛЦИ, И ПРѢДСТАНИЦИ, И ЧЕЛНИЦИ КОИ СЕ ѡБЕРѢТАЮ СЕЛИ И КАТЪНИ, ѡБЛАДАЮЩЕ),⁷⁵ but without specifying the competencies of hamlet chiefs.

3.2 Feudal Duties

The main duty of Vlachs was so-called *travnina* (from *trava* = grass, Greek ἐννόμιον, Latin *herbaticum*)—indemnity from using the noblemen’s pastures. Saint George’s chrysobull says that everyone who uses the pasture on Church mountains has to pay for grazing-rights, according to the law (ТАКОЖДЕ КТО ИСПАНИНУЕ НА ЦРЬКОВНОИ ПЛАНИНѢ ДА ПОДАЕ ЦРЬКВИ ТРАВНИНУЮ ЗАКОННОУ).⁷⁶ However, the charter does not specify the law, probably because it was a generally known custom. Later documents speak of grazing-rights (*travnina*, ТРАВНИНА) more preciously. The Dečani charter refers to an old law of “travnina” “of the flock,

73 On the organization of Vlachs’ hamlets (*katuni*) see Novaković, *Selo*, pp. 29–52 and 161–173; M Filipović, “Struktura i organizacija srednjovekovnih katuna” [“Structure and Organization of Mediaeval Hamlets”], in *Naučno društvo SR BiH* (Sarajevo 1963), pp. 45–112; D. Kovačević, “Srednjovjekovni katuni po dubrovačkim izvorima” [“Mediaeval Hamlets according to the Ragusan Sources”], in *Naučno društvo SR BiH* (Sarajevo 1963), pp. 121–140; B. Đurđev, “Teritorijalizacija katunske organizacije do kraja xv veka” [“Territorial Organization of Hamlets until the End of the 15th Century”], in *Naučno društvo SR BiH* (Sarajevo 1963), pp. 143–196. Cf. R. Katić, *Stočarstvo srednjovekovne Srbije* [Cattle Raising of Mediaeval Serbia] (Belgrade 1978), pp. 9–30, and B. Ferjančić, “Stočarstvo na posedima svetogorskih manastira u srednjem veku” [“Cattle Raising on the Estates of the Athonite Monasteries in the Middle Ages”], *ZRV* 32 (1993), pp. 35–127.

74 Mošin, Ćirković, and Sindik, *Zbornik*, p. 69.

75 Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 113; *Zakonik cara Stefana Dušana*, vol. III, p. 140 (edition of Serbian Academy for Science and Art). John Cantacuzenos mentions a certain Martzelat, chief of some Serbian shepherds near Berroia, who helped him to re-conquer the town from Serbs (see *VIIIN* vol. VI [Belgrade 1986], p. 499, n. 449). But even the Emperor-writer does not specify the competences of this Martzelat.

76 Mošin, Ćirković, and Sindik, *Zbornik*, p. 327.

2 rams and 2 lambs and a cheese and a dinner” (од стада .в. ов’на и .в. ягнѣти, и сирь, и динарь).⁷⁷ Dušan’s Code (article 197) has a different order: “When a man come to any lord for the winter, let him give grass-tribute: for one hundred mares, a mare; for sheep, a ewe with lamb, and for one hundred cattle, an ox” (Коемоу властелинѹ прѣиде да зимѣе чловѣкъ, да дава травнинѹ: вт ѿ кобиля кобиля, вѣ вѣць вѣцѹ съ аган’цемь, и вт ѿ говедѹ говедо).⁷⁸

Besides grass-tribute (*travnina*), Vlachs had to give a certain quantity of cattle, and this was not the same on all manors. The Saint Stephen’s and Archangels’ charters say “that they have to give every summer for 50 sheep a ewe with a lamb and one more barren” (А се законъ Влахомь... да даю на всако лѣто вт .и. вѣцьоу съ ягнѣтемь а другоу яловоу).⁷⁹ The charter of King Dušan giving to the monastery of Hilandar the church of Saint Nicolas in Vranje (1334–1345) established the obligation of two horses every year (И да оѣзима игѣмьнь хиландар’ски .в. коня на годице).⁸⁰ Saint Stephen’s charter orders that every man (Vlach) has to give five lamb leathers annually (И да даю цркви на годице всакъ чловѣкъ по .в. ягнѣтинѹ).⁸¹ And Saint Archangels’ chrysobull exempts the poor Vlachs from these demands: “And the Vlachs, who are poor, let them carry the Church wool, according to the orders of the monastery prior” (а власи кои соу оубози да теже вьлноу црковноу, цю имь повелѣва игоумьнь).⁸²

Besides the grass-tribute, Vlachs owed some compulsory labours to the Church as well—to graze Church mares, sheep, swine and oxen—and had the obligation to compensate for lost cattle (И ако по грѣхоу изгинуоу оу цркви кобыле да се даде слагаяюкѣ .е. тоу кобылоу прьво годице, а вѣкѣ ница).⁸³ For their work of grazing the Vlachs got from the monastery so-called *mesečina* (from *mesec* = month), food to eat, and so-called *beleg* (велегь, literally mark, stamp),⁸⁴ a salary in cattle. The Vlachs had to follow the monastery superior (*iguman*, игоумьнь) and steward (*ikonom*, икономь) on their travels and to “carry

77 Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 56; Novaković, *Zakonski spomenici*, p. 647, para. vi.

78 Burr, “The Code of Stephan Dušan”, p. 538; Novaković, *Zakonik*, p. 145; *Zakonik cara Stefana Dušana*, vol. III, p. 278 (edition of Serbian Academy for Science and Art).

79 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 467–468; Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 113.

80 Edited by S. Marjanović-Dušanić, “Povelja kralja Stefana Dušana o poklanjanju crkve Svetog Nikole u Vranju manastiru Hilandaru” [“Charter of King Dušan Giving the Church of Saint Nicholas in Vranje to the Monastery of Hilandar”], *SSA* 4 (2005), p. 73.

81 Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

82 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 113.

83 Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

84 See M. Blagojević, “Beleg”, in *LSSV*, pp. 38–39.

the salt and all the monastery's needs" (И да гредѹ съ игѹмноѹ и съ икономѹ камѹ имѹ повели. И да носе соль и потрѣбѹ манастирскѹ в'сакѹ).⁸⁵ This means that Vlachs had to give packhorses and equipment for transport of salt from the littoral to the interior of the country.

Although the survival legal documents mention only the monastery Vlachs, dependent shepherds lived on worldly lord's manors as well, and also on the Tsar's estates. This fact can be indirectly seen from Tsar Dušan's chrysobull given to the monastery of Saint Archangels Michael and Gabriel, according which Vlachs have to give to the Church in the same way "as they used to give to me, the Tsar" (како соу давали царьствоу ми).⁸⁶

The legal status of Vlachs was the same as the legal status of villagers (*meropsi*). This can be clearly seen from the text of the first Žiča chrysobull (1219–1220), which mentions tributes "which come either from Vlachs, or from villagers" (нѹ что доходи или отъ Влахъ, или земаляна).⁸⁷ Like villagers, Vlachs could not leave the land: Nemanja's charter to Hilandar already forbade Vlachs and villagers from running away from their manors. If someone fled from their lord, they had to be turned back. Article 32 of Dušan's Code adds: "Ecclesiastical persons who administer Church villages and Church lands and drive the Church labourers and shepherds away, those who have driven the men away, let them be bound and their land and people taken from them; and let the Church keep them until they have restored the men whom they drove away" (Людѣ црковнымъ, кои дръже црковна села, и земли црковне; а прогнали соутъ мероп'хе црковне, или влахе; унизили коино сѹ раз'гнали людѣи, да се свежѹ и да имъ се оузме земля и людѣ; и да ихъ дръжи црква до гдѣ скоупе людѣи кое сѹ раз'гнали).⁸⁸

However, the social position of Vlachs was in fact much better than the position of villagers. This is the reason why lot of villagers (*meropsi*) tried to get into the class of Vlachs through marriage. But because of a permanent manpower deficiency, charters vigorously forbade this practice. Saint Stephen's charter says: "It is forbidden for a Serb [villager] to marry a Vlach. If he do it, without a knowledge of monastery prior, let him be captured and tied, he and his Vlach-wife, and let him get back, without his will on his father's place" (Србвинъ да се не жении оу Властѹхъ. Ако ли се вжении оу невѣстѹ игоум'новоу, да се вграбини и свеже и онъ Влахъ отъ кога се боуде женилъ, и да се вратни безъ воли впецъ на

85 SSA 4 (2005), p. 73.

86 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 113.

87 Mošin, Ćirković, and Sindik, *Zbornik*, p. 92.

88 Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, p. 30; *Zakonik cara Stefana Dušana*, vol. III, p. 106 (edition of Serbian Academy for Science and Art).

вѣчно мѣсто).⁸⁹ The Dečani charter completes this decree, saying: “if he [villager] marry her [Vlach-woman] let her get into villagers” (ако ли се ожени да ю веде оу мѣроп’хѣ).⁹⁰ Thus a Vlach-woman who married a villager (*meropah*) went through the marriage into the villager’s class. Saint Stephen’s charter makes an exemption to that rule: villagers who have married Vlachs long before the proclamation of this decree, and who have lived among Vlachs, could stay with Vlachs, but they could not be soldiers. The charter calls this category of villagers *starinici* (старин’ници, from *star* = old).⁹¹

Saint Stephen’s charter marks a difference between Vlachs soldiers and so-called *kelatori* (кѣлатори).⁹² The above information poses two questions. Did Vlachs have a military service? And who were the *kelatori*? Stojan Novaković’s understanding of the word *kelatori* led him to believe that Vlachs had to exercise a military service, either as soldiers or as field-train soldiers (*komordžije*).⁹³ However, military service was a duty of noblemen, who had to bring a certain number of commoners. As the Church was exempt from military service, Church Vlachs could not be State-soldiers.⁹⁴ It seems that the word *soldier* (воинникъ) in Saint Stephen’s charter designates those Vlachs, who as riders either followed the monastery superior on the road or kept the horse herd. For such an interpretation we can find arguments in the charters. King Dušan’s charter to the monastery of Hilandar speaks of Vlachs who are appointed as soldiers (Кои се именѡе воинникъ).⁹⁵ Saint Stephen’s charter says that “the soldier has to graze the stallions” (а воинникъ да пасе пастоухѣ).⁹⁶

More complicated is the question of the meaning of the word *kelator* (or *celator*, plural = *celatori*). Teodor Taranovski says that the meaning of the word cannot be defined: however, *celatori* were all Vlachs who were not soldiers.⁹⁷ Stojan Novaković finds that the word *celator* comes from Greek κελάρι (*celar*), meaning stable or lumber-room. According to him *kelatori* would be the people whose duty was to guard or protect something.⁹⁸ Sextil Puscariu says

89 Mošin, Ćirković, and Sindik, *Zbornik*, p. 464.

90 Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 134.

91 Mošin, Ćirković, and Sindik, *Zbornik*, p. 464.

92 Ibid.

93 Novaković, *Stara srpska vojska*, pp. 70, 131–132.

94 Taranovski, *Istorija*, vol. I, p. 73.

95 SSA 4 (2005), p. 73.

96 Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

97 Taranovski, *Istorija*, vol. I, p. 73. The author takes his argumentation from Saint Stephen’s charter.

98 Novaković, *Selo*, p. 192, n. 69. In Serbian legal documents the word *celar* in the meaning of small room is mentioned in the contract made by Radosava, wife of Radonja Mirković,

that the term *kelator* comes from Rumanian word *căle* (*callis*) = road, *căl* = horse. So, *calator* means traveller, corresponding to the Greek word *ὁδῖτης* and Old Serbian *ponosnik* (поносникъ). A *kelator* was a person who had to transport on his horse various goods, the duty that was called in Serbian legal sources *ponos* (понось).⁹⁹ However, a provision of Saint Stephen's charter contradicts this interpretation: "Soldiers and kelators as well, to carry the cheese from the mountain; and kelator to graze [sheep] and wool to cut, and soldiers to graze the stallions. And when the bad times come a soldier and a kelator as well to keep the sheep" (и воинники и кѣлаторъ да носе сырениние с планине, и кѣлаторъ да пасе и вьлноу стрижѣ, а воинники да пасе пастоухѣ, а оу зло врьѣме и воинники и кѣлаторъ да гредѣ къ овцамъ).¹⁰⁰ In spite of scholars' efforts, it seems that the meaning of the word *kelator* remains unclear.

Beside cattle breeders—Vlachs—the charters mention the existence of shepherds who were villagers (*meropsi*) and who had to keep monastery's cattle. According to the information of King Milutin's chrysobull issued to the monastery of Hilandar (1303–1304; after 1331) the difference between those shepherds and Vlachs was obvious. It is said: "My Royal Majesty saw that the Holy Church gives annually twelve stallions to the shepherds as a *beleg* [payment in cattle], and for that reason I allowed the Vlachs to graze the Church mares, and to take no *beleg*; if they loose something they have to pay to the Church 10 perpers for one horse and 20 perpers for one mare" (И пакѣ видѣ краљевство ми кере даје светѣа цркви на годици .XII. ждрѣвца пастыремъ бѣлѣгоу. Да того ради приложихъ Влахе, и ине Влахе избрахъ въ црковныхъ Влахъ, да пасоу кобылиѣ црковне, а да не оузимаю тѣ въ цркве бѣлѣгоу ничто; паѹе ако что изгоубетъ, да плакиают ѿ себе конь по .L. перперъ а кобылоу по .K. перперъ, да плакиаю цркви).¹⁰¹ So, the shepherds got *beleg* and were not responsible for the loss cattle, and Vlachs did not get *beleg* and *mesečina*, so it is difficult to define a general rule concerning the difference between shepherd-villagers and shepherd-Vlachs.¹⁰²

who sells her house in Trepča (today in Kosovo) to the monastery of Saint Paul on Holy Mountain (1438). Radosava says that she will keep one *čelar* (small room) of the house until the end of her life, where she and her sister will live. Editions of the document: Solovjev, *Odabrani spomenici*, p. 206; Đ. Bubalo, *Srpski nomici* [*Nomiks in Medieval Serbia*] (Belgrade 2004), p. 260.

99 S. Puscariu, *Ethymologisches Wörterbuch der rumänischen Sprache* (Heidelberg 1905), see *călator*. Cf. Katić, *Stočarstvo*, p. 25 sq.

100 Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

101 Ibid., p. 377.

102 See S. Mišić, "Zakonske odredbe o Vlasima u poveljama Nemanjića" ["Legal Provisions on Vlachs in Nemanjić's Charters"], *Braničevski glasnik* 7 (2010), pp. 36–47.

4 Slaves

4.1 Names

The lowest rung on the social ladder in mediaeval Serbia were the class called *otroci* (singular *otrok*). The word *otrok* (отрокъ) primarily means a child or a boy; it is obsolete in Serbian, but survives in Czech as a normal word for a slave and in Slovenian, Russian and Polish as a word for a child or a boy. The legal status of *otroci* was similar to slaves, but because the *otroci* had certain personal rights there remain many questions concerning their legal status. Serbian legal sources also use other words for slaves: *rab* (рабъ, in modern Serbian *rob*, роб), *čeljadin* (ЧЕЛЈАДИНЬ) and *čeljad* (ЧЕЛЈАДЬ).

When the translator of the *Nomokanon* of Saint Sabba faced the several Greek terms denoting the word slave, male or female (ἀνδράποδον, δοῦλος, οἰκετής, παῖς, θεράπεινα), he simplified the Greek names, reducing them to *rab* (male) and *raba* (female).¹⁰³ The word *rab* (рабъ) was present in the *Syntagma* of Matheas Blastares, as well. In chapter D-11 (Д-11) we read as follows:

The main distinction in the law of persons is that all men are either free [СВОБОД'НЫ] or slaves [РАБЫ]. Freedom is one's natural power of doing what one pleases, save insofar as it is ruled out either by coercion or by law. Slavery [РАБОТА] is the institution of the law of the peoples [ІЗЪЫЧЬСКАГО ЗАКОНА, ἐθνικοῦ νόμου, *iuris gentium*] and consequence of war contrary to the natural law [ІЕСТЬСТЪВНОМОУ ЗАКОНУ, φυσικοῦ νομίμου, *iuris naturale*], because nature has created all men free. The free are either freeborn [БЛАГОРОДНІЕ, εὐγενεῖς, *ingenuus*] or freemade [ОСВОБОДНІЕ, ἀπελευθέρους, *libertinus*]. The freeborn were born of free parents and were not grown under the slave yoke [и не оу на́р'ма рабѣти въкоу́снѣ]; the freemade was born of a manumitted slave [ОСВОБОД'НІИ ЖЕ ИЖЕ ОТЬ РАБА ОСВОБОЖДЕН'НАГО РОДИВИ СЕ].¹⁰⁴

103 See M. Petrović, *Krmčija Svetoga Save o zaštiti obespravljenih i ugroženih* [Krmčija of Saint Sabba on Protection against Deprivation of Rights and Being Threatened] (Belgrade 1990), pp. 53–74.

104 Edited by Novaković, p. 249. See T. Taranovski, "Političke i pravne ideje u Sintagmatu Vlastara" ["Political and Legal Ideas in Blastares' *Syntagma*"], *Letopis Matice Srpske* 317 (1928), Prilozi Letopisu, pp. 160–170; S. Šarkić, "Gajeva podela lica u srpskom srednjovekovnom pravu" ("Gaius' Division of Persons in Serbian Mediaeval Law"), *ZMSKS* 4–5 (2002–2003), pp. 107–112; and S. Šarkić, "Ideas of Stoic Philosophy in Serbian Mediaeval Law", *Istraživanja, Journal of Historical Researches, Faculty of Philosophy, University of Novi Sad* 29 (2018), pp. 39–47.

It seems that this distinction, taken from the Roman lawyers Gaius¹⁰⁵ and Florentinus¹⁰⁶ through the *Epanagoge/Eisagoge*, had a more declarative character: the legal sources in mediaeval Serbia do not allow for the conclusion that the population had been divided into free persons and slaves. However, Tsar Dušan's and King Uroš's charters, giving the church of Saint Nicholas under the mountain Kožalj to the Metropolitan of Serres Jacob and to the Saint Archangels' monastery in Prizren (1353), mentions the slaves (*rob*, not *rab*) Počrnja and Tzuknalija (рѡб Почрънѡа, рѡб Цѡукналіа).¹⁰⁷ Was the legal status of those slaves different from the status of *otroci*, or was this an exceptional use of the term *rob* (slave)? It is difficult to say.

The translator of the *Nomokanon* uses once the word *čeljadin* (чѣлѣдинъ) to translate the Greek word ἀνδράποδον (a second time he translates the same word as *rab*, рабъ). By using the term *čeljadin*, the translator wanted to keep alive its archaic meaning, according to which ἀνδράποδον is a slave in the classical sense, that is δοῦλος, but not by birth; in fact, such a man became first a prisoner of war and then a slave that was sold as such.¹⁰⁸ *Čeljad* and *čeljadin*, in the meaning of slaves, are mentioned twice in the treaties with Dubrovnik. The first time, Andrija Zlat (Dauro), the Prince (*Knez*) of Dubrovnik together with all nobles and community of the Republic, swears that he will keep peace and friendship with the Serbian King Uroš I (August 1254), and among others are mentioned "slaves from Your Royal State" (чѣлѣд, зѣмьлѣ кралеѣвѣства ти). King Milutin in the treaty with Dubrovnik (14 September 1302) says that the Ragusans have to appear before the King's court for crimes of treason, murder, horse-thief and *čeljadin* (crimes concerning the slaves).¹⁰⁹ However, the terms *rab* and *čeljadin* were soon abandoned in Serbia; 13th- and 14th-century sources speak about *otroci* as the lowest class of Serbian society. Whether they were slaves or not is a very difficult question.

105 Gaius, *Inst.* 1, 9–11; *Iust. Inst.* 1, 3; D. 1, 5, 1.

106 D. 1, 5, 3–4.

107 Edited by G. Bojković, "Povelja cara Stefana Dušana i kralja Stefana Uroša mitropolitu ser-skom Jakovu" ["Charter of Emperor Stefan Dušan and King Uroš to the Metropolitan of Serres Jacob"], *SSA* 15 (2016), p. 94.

108 The root of the word *čeljadin* is *čeljade* (man or child) resulting from the collective noun *čeljad* which in later centuries occasionally appears along with the old meaning "slaves", although it most often designated the "member of family" just as it does today. The expression *čeljadin* survived in Russian manuscripts in its archaic form and meaning of the word рабъ (slave). See M. Petrović, "Čeljadin" ["Tchelyadin"], in *O Zakonopravilu ili Nomokanonu Svetoga Save*, pp. 53–65.

109 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 216 and 346.

4.2 Social Status

The best experts in Serbian mediaeval law, such as Stojan Novaković, Konstantin Jireček, Teodor Taranovski, Aleksandar Solovjev, Nikola Radojčić and Dragoslav Janković, thought that *otroci* were some kind of mediaeval slaves or a category of population similar to slaves.¹¹⁰ On the contrary, Nikola Krstić wrote that in mediaeval Serbia there was no slavery, so the *otroci* could not be slaves. His point of view has been adopted by Milenko Polićević and Milan Vlainac.¹¹¹

The argumentation of authors who think that *otroci* were a kind of slaves was based upon the following sources:

- 1) *Otroci* were part of the private and hereditary estate of their lords, as is clearly confirmed at the beginning of article 44 of Dušan's Code: "And such slaves¹¹² as a lord has, they shall be part of his estate and to his heirs for ever" (И отроке цю имаю властѣае, да им' сѣ оу бащинѣ, и ных дѣце оу бащинѣ вѣч'нѣ). Slaves (*otroci*) could also be the property of the Church, monarch and maybe the towns, as well as of lords. As article 46 of the Code says: "And whoever has slaves, let him have them as an inheritance" (И отроке цю си кто имаю да их имаю оу бащинѣ).¹¹³ Tsar Dušan's charter confirming the privileges of the lesser lord Ivanko Probištitović (1350) says that Ivanko and his children will have everything that he bought and all *otroci* in eternal hereditary estate (Този мѣ все мало голѣмо записѣ царьство ми ѣ бащинѣ више писано... такожде записѣ царьство ми Иванкѣ и неговѣ дѣци до вѣка непоколѣбимо никимъ ... и съ кѣпеницами и съ втроки да си има и дрѣжи Иванко и негова дѣца до вѣка).¹¹⁴ On 10 April 1357, Tsar Uroš gave to the Kotor nobles Bivolčić and Bučić the island of Mljet (today in Croatia) as a hereditary estate and in "*otrok's* name" (да имь кѣтъ

110 Novaković, *Zakonik*, p. 176; Jireček, *Istorija Srba*, vol. II, p. 102; Taranovski, *Istorija*, vol. I, pp. 76–82; A. Solovjev, "Sokalnici i otroci u uporedno-istoriskoj svetlosti" ["Sokalniks and Otroks in Comparative Historical Light"], *Glasnik SND* 19 (1938), pp. 103–132; Solovjev, *Zakonik cara Stefana Dušana*, pp. 210–211; Radojčić, *Zakonik*, who translates the word *otrok* always with *rob* (slave), pp. 51, 52, 56, 57, 100, 101, 108, 110, 118; D. Janković, *Istorija države i prava feudalne Srbije*, pp. 38–40.

111 N. Krstić, "Razmatranja o Dušanovom zakoniku" ["Considerations on Dušan's Law Code"], *Glasnik DSS* 6 (1854), p. 143; M. Polićević, "Ustrojstvo pravosuđa u staroj srpskoj državi u XIII i XIV veku" ("Organization of Justice in Old Serbian State in 13th and 14th Century"), *APDN* XXIII (1923), p. 202; Wlainatz, *Die agrarrechtlichen Verhältnisse des mittelalterlichen Serbiens*, pp. 280–281.

112 Malcom Burr translated the word *otrok* always with *slave*.

113 Burr, "The Code of Stephan Dušan", p. 207; Novaković, *Zakonik*, pp. 39 and 41; *Zakonik cara Stefana Dušana*, vol. III, p. 110 (edition of Serbian Academy for Science and Art).

114 Edited by V. Aleksić, *SSA* 8 (2009), p. 73.

The second part of article 44 orders: "Only a slave may not be given as a marriage portion" (НЪ ОТРОКЪ ОУ ПРИКЪНЕ ДА СЕ НЕ ДАЕ НИКЪДА).¹²² Trying to explain this strange decree Alexander Solovjev pointed to the old Roman and Byzantine custom, that existed in Dubrovnik and Kotor, that only female slaves (*ancillae*) could be given as a marriage portion. According to the author's interpretation, article 44 forbids only giving as a marriage portion of a male *otrok*, wishing to stop the reduction of manpower on manors.¹²³ Nikola Radojčić finds that the prohibition of giving an *otrok* as a marriage portion was a high level of personal rights. It was a guarantee that an *otrok* would stay in the place where he was born; otherwise his social position could become even worse.¹²⁴ However, as Lujo Margetić noticed, this decree could be very easily tricked: the *otrok*'s master could give as a present the male *otroks* to his daughter or to his son-in-law. Or he could "sell" the *otroks* at a very low price to his son-in-law.¹²⁵

It is to be noted that although there was a distinct difference between the *otroci* and *meropsi* (villagers, serfs) when the two classes lived together in one village, attention was not paid to the difference in personal rights between them. It clearly says in article 67 of the Code: "Slaves and villagers who dwell together in one village shall all pay together any payment which comes due: such payment men make and work that they do, so much land let them have" (ОТРОЦИ И МЕРОПСИ КОИ СЪДЕ ЗАЕДНО Ъ ЕДНОМЪ СЪЛЪ, ВЪСАКА ПЛАКІА КОІА ПРИХОДИ, ДА ПЛАКІАЮ ВЪСИ ЗАЕДНО; НА ЛЮДІИ КАКО ПЛАТЪ ПЛАКІАЮ, И РАБОТУ РАБОТАЮ, ТАКОЗИ И ЗЕМЛЮ ДА ДРЪЖЕ).¹²⁶ Reading the text of the article 67 we can conclude that some *otroci* had their own lands. Information given by charters confirms such

122 Burr, "The Code of Stephan Dušan", p. 207; Novaković, *Zakonik*, p. 39; *Zakonik cara Stefana Dušana*, vol. III, p. 110. For a marriage portion (dowry) the Code uses the Greek word *prikija*, coming from *πρόιξ, προίκα*. In modern Serbian we use the Arab word *miraz* (Arab *mīrāt*, Turkish *miras*), which came into Serbia during the Turkish occupation. See A. Škaljić, *Turcizmi u srpskohrvatskom-hrvatskosrpskom jeziku* [Words of Turkish Origin in the Serbo-Croatian Language] (Sarajevo 1985), p. 464. Cf. S. Šarkić, "Provisions of Roman Law on Dowry in Serbian Mediaeval Law", *ZS-SR 125 Band, romanistische Abteilung* (2008), pp. 682–687.

123 A. Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 131–132, and *Zakonik cara Stefana Dušana*, p. 211. In littoral cities a female slave (*ancilla*) was given as a marriage portion to every rich woman. Especially high was the price of a wet nurse (*ancilla, babica, baiula*). See Jireček, *Istorija Srba*, vol. I, p. 102, and "Das Gesetzbuch des serbischen Caren Stephan Dušan", p. 159.

124 N. Radojčić, "Oko Dušanova Zakonika" ["On Dušan's Law Code"], *IC 5* (1954–1955), p. 11.

125 Margetić, "Bilješke o meropsima, sokalnicima i otrocima", p. 111.

126 Burr, "The Code of Stephan Dušan", p. 211; Novaković, *Zakonik*, p. 55; *Zakonik cara Stefana Dušana*, vol. III, p. 116. Novaković, *Zakonik*, p. 187, considers that this identity of procedure could occur only when the villager (*meropah*) had no *baština* (hereditary estate), and for

conclusion. On the Saint Stephen's monastery manor everyone had to treat the vineyard "and priest, and pupil, and *otrok*, and every craftsman as well as the other workers; who does not dig it [vineyard] until the Easter, let an ox be taken from him" (А виноград всакъ да копаа: и попъ и дѣлакъ, и вѣтрокъ, и всацѣи манастирѣи ѣко и прочѣи работ'ници; к'то ли га не оускопѣа до Вѣскрѣсенѣа да моу се воля оупадѣ).¹²⁷ It is obvious that on Saint Stephen's manor *otroci* possessed some lands, because the fine is equal for all the abovementioned classes. The Dečani charter says that some *otroci* had a duty to follow their masters on the road: "*Otroci* who go on the road with a monastery superior or some of monks, doing some Church business, let they not feed from their houses, but with a Church flour" (вѣтроци кои с игоум'номъ на поуѣ гредоу, а или с коимъ калогѣромъ по црѣковнои работѣ да се вѣд коукиѣ не храни нѣх црѣков'нимъ брашномъ).¹²⁸ King Dušan's charter to the monastery of Hilandar (c.1336–1340) contains the chapter "The Law of Suburbs" (законъ подградѣю). According to this "law" the *otroci* from the city of Štip (in North Macedonia) area, who had horses and were able to exercise knight's services, were exempt from regular labourers' duties. Their horses would not carry cargo. Those who had no horses had to plough one day in autumn and one day in spring and to dig the vineyard one day (И трѣгъ цѣпски и законъ подградѣю кои соу вѣтроци съ конми, да имъ ѣсть законъ: кѣги походи икономъ крѣлю или на котороу годѣ работоу, а они с нимъ на конехъ. А да им се кони не оузимають, ни под товаръ да се не подлагають, нѣ сами с ними да походятъ на кои годѣ посоль црѣкви. А кои соу бес коней, да вроутъ дѣнь ѣсенѣи и дѣнь пролѣтѣниѣ, и да го пожноутъ и изврѣхоутъ, и дѣнь ѣ виноградѣ да работають).¹²⁹ King Dušan's charter from about 1331 to the Hilandar's fortification tower (*pirg*, from Greek πύργος) mentions ten *otroci* who began a monastery's service by their own will (И се отроци, кои соу полюбили црѣкву).¹³⁰ It is obvious that those *otroci* could not be slaves.

Beside the escort of their masters, *otroci* got some other confidential duties. Giving privileges to the monastery of Saint Nicolas in Vranjina (1233), Arch-

that reason the difference in rights became merely nominal, since a *meropah* without a free holding was in no better position than an *otrok*, to all intents and purposes.

127 Mošin, Ćirković, and Sindik, *Zbornik*, p. 464.

128 Edited by Ivić and Grković, *Dečanske hrisovulje*, pp. 133–134.

129 Edited by A. Fostikov, "Zbirna povelja kraljeva Milutina i Stefana Dušana Hilandaru" ["Collective Charter of Kings Milutin and Stefan Dušan to Hilandar Monastery"], *SSA* 13 (2014), p. 93. S. Ćirković, "Hreljin poklon Hilandaru" ["Hrelja's Gift to Hilandar"], *ZRVI* 21 (1982), p. 104, n. 3, thinks that the word *otrok* was used here in a general sense, meaning the whole city population, either those who had noblemen's privileges or those who had to exercise the feudal services.

130 Novaković, *Zakonski spomenici*, p. 486, para. IV.

bishop Sabba ordered that the monastery's people (villagers) are not under the power either of the great lords or the Archbishop or his *otrok*, nor of anyone, great or small (И које чловѣке тѣзи посаде на томъ мѣсте, које мѡ съмъ азъ далъ, да не има надъ ними властѣ ни велможа, ни архиепископъ ни игуменъ втрокъ, ни инъ кѣто ни малъ ни великъ).¹³¹ In this case, the *otrok* was the executor of the Serbian Archbishop's authority. A part of the *otroci* had a very important role in judiciary system. Saint George's charter forbids all of the King's dignitaries (the list mentioned in the text is very long) from putting on trial the monastery villagers and appointing an *otrok* (чловѣкоу Светаго Гевургина да не соуди никон владоуци по дрѣжавахъ кралиевства ми, ни да дае втрока на нь). In the same charter, a little bit further on, we can read that only the hegoumenos (*iguman*) and his *otrok* can judge the monastery serfs (И кто се наге комоу кривъ чловѣкъ Светаго Гевургина да се при прѣдъ игоуменомъ и съ игоуменовѣмъ втрокомъ).¹³² On 12 January 1454 Despot Đurađ Branković ordered his vassal, lord Oliver Golemović, to define the boundaries of the estates of the monastery of Hilandar. Oliver Golemović appointed a jury and sent them the *otrok* Nikola Vladović (и посла ни отрока Николоу Владовика).¹³³ However, the text of the document does not allow any conclusion as to what was the importance in that case of *otrok* Nikola Vladović. Fortunately, from the same year (1454) we have another document disputing the boundaries between the estates of the monasteries Hilandar and Saint Archangels. One more time Oliver Golemović appointed a jury, but for this trial he sent instead of himself the *otrok* Radosav Đurašinović (с отроком кога беше послаа Оливеръ Големовикъ мѣсто себе, Радосава Гюрашиновика). Radosav Đurašinović took the oath (И томоуи би отрокъ кон ни заклѣна, вишеписани Радосавъ Гюрашиновикъ)¹³⁴ of 24 jurors (*starinici*) in the presence of priors and other dignitaries of two famous monasteries. It is perfectly clear that in this case the act of the oath was committed to an *otrok*.

The term *otrok* can also be found in documents of Serbian monarchs written in Greek. Despot John Uglješa, in the charter solving the dispute on the land between the monastery of Zographou (on Holy Mountain) and the bishop of Hierissos (February 1369), says that he sent his Greek courtier (οἰκείς) Niketas Pediasimos (Νικήτας Πεδιάσιμος) as *otrok* (ὡς ὀτρόκου) to deliver land to

131 Mošin, Ćirković, and Sindik, *Zbornik*, p. 127.

132 Ibid., p. 326.

133 Solovjev, *Odabrani spomenici*, p. 214.

134 Ibid., pp. 215–216. It is interesting that both documents start with the terms “we, the slaves and subjects (*rabi i poslušnici*) of our lord Despot”. So, the document uses at the same time the terms *rab* and *otrok*, but it seems that neither of them means slave in the classical sense. *Rab* means here servant, and *otrok* is a judiciary executor.

the monastery's community. As an *otrok* Niketas Pediasimos was not a simple executor of a verdict: as the Despot's man of confidence he was sent to Thessaloniki to examine the witnesses, and it was according to his report that the sentence was pronounced.¹³⁵ Obviously, Niketas Pediasimos was not a slave, but rather a Byzantine noble who exercising the duty of an *otrok*.¹³⁶

Considering all the details given by the legal sources, it is evident that the *otroci* could not be simply called slaves, and that the term had few different meanings.¹³⁷ Basically, the *otroci* occupied the lowest rung on the social ladder; they were a class of people with a social status between serfs and slaves. However, the close relationship between an *otrok* and his master might create a relation of confidence, so that some very important missions could be committed to an *otrok*.¹³⁸

5 Dependent Craftsmen and So-called *Sokalnici* (сокалници)

5.1 *Dependent Craftsmen* (maistorie, маисторије)

King Milutin's charter to the monastery of Saint Stephen in Banjska and the charter of his son, King Stefan Uroš Dečanski, to the monastery of Dečani, mention blacksmiths, woodworkers, tailors, tanners, potters, saddlers, masons and goldsmiths. All these craftsmen (маисторије) had the same duties as the *sokalnici*, a class of the population whose legal status is not clear. The equal duties are evident from the text of the Dečani charter: "all craftsmen have to work like the

135 Solovjev and Mošin, *Diplomata graeca*, pp. 276, 278.

136 A. Solovjev, "Sudije i sud po gradovima Dušanove države" ["Judges and Courts in Towns of Dušan's State"], *Glasnik SND* 7–8 (1929–1930), p. 160, finds that the respectable Niketas Pediasimos in that case exercises a modest duty of presence, that usually does not belong to him. Solovjev's opinion cannot be accepted, because, as G. Ostrogorski, *Serska oblast posle Dušanove smrti* [Region of Serres after Dušan's Death] (Belgrade 1965), p. 22, pointed out, the abovementioned land was two years later delivered to the monastery by the "geneal judge" (κριτής καθολικός) himself, on the order of Despot Uglješa.

137 See R. Mihaljčić, "Otroci", *IG* 1 (1986), pp. 51–57 = *Prošlost i narodno sećanje* (Belgrade 1995), pp. 233–240. See also Đ. Bubalo, "Otrok" and "Rob, Robinja", in *LSSV*, pp. 483–485 and 622–625. Cf. S. Šarkić, "Pravni položaj Vlaha i otroka u srednjovekovnoj Srbiji" ["Legal Position of Dependent Shepherds and Slaves in Mediaeval Serbia"], *ZRPFS* XLIV/3 (2010), pp. 37–51.

138 It is well known that in Ancient Rome very important duties were conferred to the slaves and especially to the freemade (*libertinus*) ones. Margetić, "Bilješke o meropsima, sokalnicima i otrocima", p. 113, considers that the *otroci* were a social class similar to noblemen servants in mediaeval Croatia or the *ministeriales* of German law.

sokalnici" (и в'си манисторіє да работаю іако и сокал'ници).¹³⁹ In the next chapter, the Dečani charter adds: "And the hay has to be mown the same way by the villagers, *sokalnici* and all craftsmen as well" (А с'бно да косе іако и мероп'си тако и сокал'ници тако и в'си манисторіє).¹⁴⁰ The sources show us that in the mediaeval Serbia there existed different kinds of craftsmen and artisans. They were not a free class, but were rather a dependent population, close to villagers (*meropsi*). Beside their craft's duties, they were obliged to exercise different services, but their obligations were lesser. On the Dečani manor, for example, they had to plough one *mat* of wheat, one *mat* of millet, and one *mat* of oats, and cut one *mat* of vineyard.¹⁴¹

It seems that until the middle of the 14th century there was no excess need for craftsmen, because Saint Stephen's charter orders: "Any craftsman, living in any village, who has a lot of sons, let one of them stay on his father's place, but the others have to work as the villagers" (Оу коємъ любо селѣ конъ любо манисторъ, ако име имати м'ного сыновъ, єдинъ втъ нихъ на втѣринѣ мѣстѣ да встанѣ, а инии да соу работ'ници).¹⁴² So, only one of a craftsman's sons could exercise his father's job, whilst the others became villagers (*rabotnici*). That fact confirms that the agricultural labourers were much more needed. However, the situation changed in the second half of the 14th century, because the sources mention the handicrafts' villages working for the needs of the Court and noblemen. Tsar Uroš's charter to the headman (*čelnik*) Musa (15 July 1363) mentions 13 villages doing different craft jobs: two villages of grooms, two of hunters, two of field-train soldiers, two of cooks, one of goldsmiths, and four villages which wove the linen for Tsar's Court.¹⁴³ As Stojan Novaković pointed out, the memory of those artisan's villages survived in his times as toponyms, and certain names have survived to the present day, such as Kolari (wagon-makers), Sedlari (saddlers), Kovači (blacksmiths), Zlatari (goldsmiths), Štitari (shield-makers), Lončari (potters), Grnčari (potters), Kamenari (stone-carvers), Kožuari (tanners), among many others.¹⁴⁴

139 Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 133. Saint Stephen's charter has a similar order: "all of them [craftsmen] have to plough like the sokalnici" (вси да врю и косе како и сокал'ници). Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

140 Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 133.

141 Ibid., p. 133.

142 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

143 Edited by M. Šuica, *SSA* 2 (2003), pp. 144–145. See also A. Solovjev, "Jedna srpska župa za vreme carstva".

144 Novaković, *Selo*, pp. 88–130.

5.2 Sokalnici (сокалници)

Beside dependent craftsmen, five Serbian charters and Dušan's Law Code mention *sokalnici*, a class of people whose legal status has been the object of many discussions and hypotheses. An examination of legal documents shows that the feudal duties of so-called *sokalnici* were similar to those of villagers, but quantitatively lesser. King Vladislav's charter to the monastery Holy Virgin Bistrička (1234) orders that a *sokalnik* has to plough half as much as a *meropah* (villager), but he has to mow the hay and give the *obrok* (food and lodging for King's dignitaries) like a *meropah* (Сокальник да вре поле другоу м'ти всаке ралине; с'бно да коси с м'бропхомъ еднако ... и кыи приходи краалъ или властелинъ или гостъ, да приплака оу вброкъ како и м'бропахъ).¹⁴⁵ Similar decrees are contained in the Saint Stephen's and Dečani chrysobulls.¹⁴⁶ That a *sokalnik* was on a higher rung of the social ladder than a *meropah* (villager) is clearly stated by Saint George's charter: a son of a parish priest, who does not learn to read, will be not be a *meropah*, but a *sokalnik* (И поповци сынове кон книгоу не изоуче да соу сокалници а да се не померопше).¹⁴⁷ Some legal documents tell us that the *sokalnici* had to give escort to monastery dignitaries. King Vladislav's charter to the monastery Holy Virgin Bistrička says that a *sokalnik* has to go on the road, riding his horse, as the superior says (поутъ да т'бра с коне мь колико вели старъи).¹⁴⁸ According to the Saint Stephen's chrysobull, a son of a *sokalnik*, when he got married and if he was trustworthy, obtained a horse from the monastery (А сокал'ничики ... кьди на женитвоу поиде, ако боуде достоинъ, игоумень з'говоривъ се съ братиами да моу даде конь). With their horses *sokalnici* had to carry annually a cargo of corn and a cargo of wine from every place as the superior says (Сокал'ници да доносе оу годици товаръ жита и товаръ вина вт коудъ имъ рече игоумень). When they travel together with a superior and the monks, doing some Church business, they will be fed with Church flour, but when they travel alone, they will use their own (Сокал'никъ кьда съ игоуменьомъ или с калогтеромъ камо греде на црькв'ны посылъ, да се црькв'нымъ хранни, а кьди самъ греде своеу браш'но да носии). However, the *sokalnici* had to help in the sowing of the Church's and the King's crops (Сокал'ници да помагаю шити црькве и трапезе и кралевѣхъ полать).¹⁴⁹ Finally, article 107 of Dušan's Code mentions the *sokalnik* as the personal staff of the judge: "Whoever shall beat

145 Mošin, Ćirković, and Sindik, *Zbornik*, p. 167.

146 Ibid., p. 464; Ivić and Grković, *Dečanske hrisovulje*, p. 133.

147 Mošin, Ćirković, and Sindik, *Zbornik*, p. 328.

148 Ibid., p. 167.

149 Ibid., pp. 464, 456.

a *sokalnik* or officer of a judge shall be imprisoned and all that he hath will be taken from him" (КТО СЕ НАИДЕ ОУБЫВЬ СОУДИНА СОКАЛ'НИКА ИЛИ ПРИСТАВА, ДА СЕ ПЛѢНИ И ДА МОУ СЕ ВЪСЕ ОУЗМѢ ЦЮ ИМА).¹⁵⁰

Regarding who exactly the *sokalnici* were, there is no general agreement among scholars. Đuro Daničić in his *Dictionary from Serbian Literary Antiquities* wrote that a *sokalnik* was a tenant who had to pay the tribute called *soć* (*colonus qui tributum coñ dictum pendere tenebatur*, срл. *socamannus*). This viewpoint was accepted by several authors and can be found in some dictionaries.¹⁵¹ According to the interpretation of Stojan Novaković the origin of the word *sokalnik* comes from *sokalnica* = kitchen, and in that meaning the word can be found in the Serbian translation of Matheas Blastares' *Syntagma*. So, a *sokalnik* was a cook or a baker, or maybe the mason used for the building of a hearth.¹⁵² Borislav Radojković finds that *sokalnici* were lesser officers whose duty was to collect corn income (*soće*), to transport it to the storehouse (*soknica*, СОКНИЦА) and to manage the handling of it alongside the *soknica*.¹⁵³ According to the very precise philological analysis of Alexander Solovjev the word *sokalnik* is in close relation with the expressions *sokalnica* and *sokal*, but not with the terms *sok* and *soće*. He pointed out that the Serbian translator of Matheas Blastares' *Syntagma* used the word *sokalnica* (СОКАЛЪНИЦА) to translate the Greek word ἑστία

150 Burr, "The Code of Stephan Dušan", p. 517; Novaković, *Zakonik*, p. 82; *Zakonik cara Stefana Dušana*, vol. III, p. 128 (edition of Serbian Academy for Science and Art).

151 Đ. Daničić, *Rječnik iz književnih starina srpskih* [Dictionary from Serbian Literary Antiquities], vol. III (Belgrade 1864), p. 134; F. Miklosich, *Lexicon palaeoslovenico-graeco-latinum* (Vindobonae 1865), p. 868; B. Petranović, "O ropstvu po srpskim spomenicima i štatutima primorskih dalmatinskih gradova" ["On Slavery according to the Serbian Sources and Statutes of Littoral Dalmatian Cities"], *Rad* 16 (1874), pp. 62–63; *Rječnik jugoslavenske Akademije Znanosti i Umjetnosti* [Dictionary of the Yugoslav Academy for Science and Art], vol. xv (Zagreb 1956), p. 887; Skok, *Etimologijski rječnik*, vol. III, p. 302.

152 Novaković, *Zakonik*, p. 211 and "Soće i Sokalnik u srednjovekovnoj Srbiji" ["Soće and Sokalnik in Mediaeval Serbia"], *Godišnjica Nikole Čupića* 26 (1907), pp. 118–128. The majority of scholars think that *sokalnici* were cooks, bakers, and craftsmen in general, with some additional feudal duties. See Mažuranić, *Prinosi*, p. 1346; J. Gerasimović, *Staro srpsko pravo* [The Old Serbian Law] (Belgrade 1925), p. 88; Taranovski, *Istorija*, vol. I, p. 57; M. Dinić, "Sokalnici", *PKJIF* 28 (1962), pp. 149–157; Mošin, *Spomenici na srednovekovnata i ponovata istorija na Makedonija*, vol. I, pp. 235–236.

153 B. Radojković, *O sokalnicima* [On Sokalnici] (Belgrade 1937); *Još nekoliko reči o sokalnicima* [A Few More Words on Sokalnici] (Belgrade 1941), and *Nova tumačenja nekih članova Zakonika Stefana Dušana, Pronijari i sokalnici* [New Interpretations of Some Articles of Stefan Dušan's Law Code, Fief Holders and Sokalnici] (Belgrade 1965). Similar points of view are held by Polićević, "Ustrojstvo pravosuđa u staroj srpskoj državi", p. 273; Dolenc, *Dušanov Zakonik*, pp. 74, 83; and R. Grujić, "Vlastelinstvo Svetoga Đorđa kod Skoplja", pp. 67–68.

= hearth, fireplace. *Sokalnici* were ex-slaves, freemade people, but in Dušan's time the difference between villagers (*meropsi*), *otroci* and *sokalnici* was slowly disappearing.¹⁵⁴ Dragoslav Janković thought that *sokalnici* were ex-slaves, who had been transferred into noblemen's dependent servants, whose first duty was cooking, but also the transport of goods and repairing of buildings.¹⁵⁵ According to the latest interpretation of Lujo Margetić, the *sokalnici* were villagers who had some "more elegant and more honourable" duties, connected with the possession of horses. And for this reason they were completely or partially exempt from some services. Margetić finds that the legal status of the *sokalnici* reminds us of the so-called *arimani* from the district of Istrian town Poreč, and of the *knapi*, very well known in the cities of Bakar, Bribir and Novi in Vinodol County (today in Croatia).¹⁵⁶

6 Parish Priests (*seoski popovi*, попови)

6.1 Division and Social Status

Lesser parish priests, living in villages, were a relatively numerous and heterogeneous class that in entirety did not belong to the commoners. However, the legal status of the majority of parish priests was close or identical to the commoners' and that is the reason why we are speaking of them in this chapter.¹⁵⁷

Dušan's Law Code makes clear the difference between three groups of parish priests: 1) priests with patrimonial lands (*popovi baštinići*); 2) priests who got from their masters three fields, and 3) priests who got from their masters more than three fields.

The social status of priests with patrimonial lands (*popovi baštinići*) was defined by article 31 of the Code, starting as follows: "And priests who own

154 Solovjev, "Sokalnici i otroci", pp. 103–132. Trying to reject Solovjev's etymology Margetić, "Bilješke", p. 104, pointed out that the Greek word ἑστία was translated in *Nomokanon* of Saint Sabba as *povarnica* (поварница). Dinić, "Sokalnici", n. 44 suggested that the duties of *sokalnici* should not be connected with the etymology of the word, but Radojković opposed that point of view. According to him the problem of *sokalnici* cannot be solved without a correct interpretation of the origin of the expression ("Nova tumačenja", p. 37).

155 Janković, *Istorija*, pp. 36–37.

156 Margetić, "Bilješke", pp. 102–108; Cf. L. Margetić, "Knapi Frankapanskih (i zrinskih) primorskih posjeda" ["Knapi from Frankapan's and Zrinski's Littoral Estates"], *Starine* 58 (1980), pp. 177–191.

157 On lesser priests, see V. Marković, *Pravoslavno monaštvo i manastiri u srednjovekovnoj Srbiji* [Orthodox Monasticism and Monasteries in Mediaeval Serbia] (Sremski Karlovci 1920); R. Grujić, *Srednjovekovno srpsko parohijsko sveštenstvo* [Mediaeval Serbian Parish Priests] (Skoplje 1923); Grujić, "Lična vlastelinstva srpskih crkvenih predstavnika".

land shall have their patrimonial land and also be free" (И ПОПОВѢ БАЦНИИ ДА СИ ИМАЮ СВОЮ ЗЕМЛЮ БАЦНИИ И ДА СЪ СВОБОДНИ).¹⁵⁸ From this article it is clear that the priests were allowed to possess land and did not forfeit their inheritance on entering the Church. Their property right was so called *baština* (hereditary estate). Charters, promulgated before Dušan's Code, mention priests who were even owners of villages. Saint Stephen's chrysobull, for example, speaks of priest Tzerovatz, the owner of the village Vojtešina with a church (Село Вои-тѣшина попа Церовѣца, съ цръквию и съ своими мѣстами); priest Bratko possessed the village Podrima; and priest Srđ was the owner of a village on the River Ibar, in Central Serbia (Село оу подримѣ попа Братѣка; Село оу Иброу попа Срѣга).¹⁵⁹

The legal status of the other two groups of parish priests was regulated by the second part of article 31. It says: "and those priests who have no patrimonial land, to them shall be given three fields according to the law: and the priest's cap is free; and if he take more, he shall do work for the churches upon that land according to the law" (А ИНИ ПОПОВѢ КОИ НЕ ИМАЮ БАЦНИИ, ДА ИМЪ СЕ ДАДЕ ТРИ НИВѢ ЗАКОНИТѢ, И ДА ЕСТЬ ПОПОВСКА КАПА СВОБОДНА. АКО ЛИ ВЕКЪ ОУЗМЕ ОУТЪ ТѢЗИ ЗЕМЛѢ, ДА РАБОТА ЦРКВАМА ТЪ ПО ЗАКОНУ).¹⁶⁰ In the event a priest had no land, a ration of three fields, presumably the quantity considered necessary for one's needs, would be given to him. These priests were exempt from feudal services, but not from tributes. However, some priests who had big families, and therefore had taken more than three fields from their lords, had to exercise feudal duties according to the law on that excess land. These two groups of priests could not leave the manors of their lords, as is clearly stated in the article 65 of Dušan's Code, which makes an exception:

If a priest has no land,¹⁶¹ let three lawful fields be given to him. And no priest whosoever shall depart from his lord. And if his lord do not feed him according to the law, let him come to his archpriest and the archpriest shall tell the lord to feed the priest according to the law; and if the lord hearken not to him, then is the priest free to go where he will. If the priest own hereditary land, the lord has no power to drive him out, but he is free.

158 Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, p. 29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

159 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 463–464.

160 Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, p. 29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

161 *Stas*, from Greek στάσις, lit. "standing".

Попъ кои не има свога стаса, да мѡ се даде, ꙗко нивѣ законите. и попъ кои не годѣ вът свога господара, да не греде никамо. ако ли га господарь не име хранити по законуу да доиде къ своемуу ар'хїерею и ар'хїереи да рече вномѡзи властелиноу да храни попа по законѡ, да ако внизи господарь не име чюти, да несть попъ свободанъ коудѣ мѡ годѣ. ако ли боудѣ попъ бацин'ныкъ, да га несть вол'нь втгнати, тѣм'мо да не свобод'нь.¹⁶²

Usually, parish priests were exempt from some feudal services that commoners normally had. Saint Stephen's chrysobull, for example, orders that hay has to be mown by villagers (*meropsi*), *sokalnici* and craftsmen (*maistorie*), "all equally ... except the priest" (в'си ꙗд'нако... развѣ попа). The same charter exempts the priests from so-called bee-tribute, i.e. a quantity of honey (Трын'ка пѣта прѣз лѣто развѣ попа всакомоу да се оузимаа).¹⁶³ The Gračanitz charter says that parish priests were not obliged to hunt rabbits (и да лове. ꙗко дѣни заѣце заманикомъ, развѣ поповъ).¹⁶⁴ Parish priests also got from the villagers a special revenue called *bir duhovni* (spiritual tithe). According to the text of Saint Archangels' chrysobull, the tribute consisted of a tithe of grain or two dinars (и да даю бирь доуховноу наводрицомъ, лоукно жита волѣ два динара).¹⁶⁵ The Church took half of the spiritual tithe (*bir duhovni*) and the parish priests kept the second half, says the Žiča chrysobull (что доходи вът поповъ, половина да се ѡзима сиеи цркви).¹⁶⁶

Parish priests had to pay special taxes for their nomination to the higher clergy (bishops and archbishops). According to the *Syntagma* of Matheas Blastares those taxes called *kanonik* (каноникъ) or *vrhovina* (врѣховина), made on 30 villagers' houses one gold coin and two silver coins, one ram, six *kabao* (one *kabao* = 16 kg) of barley, six cups (*mera*) of wine, six pints of flour and thirty hens. Besides that, the parish priests had to give, three times a year, presents to their bishops "according to the law".¹⁶⁷

It seems that the number of parish priests was relatively high. On Dečani manor, for example, in the village of Grmočelo there were 8 priests for 90 houses; in the village of Krastavljani 4 priests lived where there were 50 houses. According to the estimation of Stojan Novaković, on the entire manor there

162 Burr, "The Code of Stephan Dušan", pp. 210–211; Novaković, *Zakonik*, p. 53; *Zakonik cara Stefana Dušana*, vol. 111, p. 116.

163 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 464, 465.

164 Ibid., p. 503.

165 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 111.

166 Mošin, Ćirković, and Sindik, *Zbornik*, p. 92.

167 Novaković, *Syntagma*, p. 543.

lived one priest for every 20 houses.¹⁶⁸ That was the reason why some charters tried to limit the number of parish priests. As has already been noted, Saint George's charter orders that the son of a parish priest who has not learned to read becomes a *sokalnik*. However, according to the Dečani charter, a son of a villager could not become a priest, even if he learned to read and write (а да се попъ ѿт попа стави а мѣроп'шикъ ако книгоу издоути да ѣ мѣроп'хъ).¹⁶⁹

¹⁶⁸ Novaković, *Selo*, p. 172.

¹⁶⁹ Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 134. Cf. S. Šarkiћ, "Maistorije, sokalnici i seoski popovi" ["Craftsmen, So-called *Sokalnici* and Parish Priests"], *ZRPFNS* XLV/1 (2011), pp. 59–67.

Townsmen (*Gradani*, Граѓани, Граждани)

1 Name and Division

The urban population in mediaeval Serbia was a legally and actually heterogenous class. Their name—*gradani* (ГРАЃАНИ or ГРАЖДАНИ = townsmen)¹ comes from the Serbian word *grad* (ГРАДЪ), meaning town, city. A *grad* (town) was originally a fortified place where the population could find a shelter.² Later, people began settling around fortresses, becoming traders and artisans. Such settlements, “under the town”, were called *podgradije* (ПОДГРАДИЈЕ), *suburbium*, or sometimes *amborija* (АМБОРИЈА).

The expression *podgradije* (Serbian *pod* = under and *grad* = town, city)³ could be found in King Dušan’s charter (between 1336 and 1342) to the monastery of Hilandar. The King says that he gave 10 villagers (*meropsi*) to the church dedicated to the Archangel Michael in the suburb of Štip⁴ (И ПРИДА КРАЛЈЕВСТВО МИ ЦРКВИ АРХІСТРАТИГОУ УТ ПОДГРАДИЈА ШТИПСКАГО .Н. ЛЮДИ). The next chapter of the same charter has a title “The Law of Suburbs” (ЗАКОНЪ ПОДГРАДИЈО), where the duties of villagers, living in the suburbs, were specified.⁵ Suburbs (*podgradije*) in the original meaning of the word were very common in Bosnia. Their names were derived from the names of the towns: Podborač (lit. under Borač), Podsoko (under Soko), Podprozor (under Prozor), Podblagaj (under Blagaj), Podkonjic (under Konjic), Podzvornik (under Zvornik), etc.⁶

The Latin term *suburbium* comes from *sub* = under and *urbs* = town, city. In Ragusan documents a suburb (*podgradije*) is designated by the Latin term *sub* or Italian *sotto* (under). For example *Podvisochi-Subvisochi-Sottovisochi*, meaning “under the royal town of Visoki” or *Subtusborach-Sotoborach*, “under Borač”, the main fortress of the mighty nobleman family Pavlović.⁷

1 On townsmen in mediaeval Serbia see S. Ćirković, “Gradani”, in *LSSV*, pp. 126–127 and S. Šarkić, “Gradska stanovništvo u srednjovekovnoj Srbiji” [“Townsmen in Mediaeval Serbia”], *ZRPFNS XLV/2* (2011), pp. 17–27.

2 See the article Lj. Maksimović, “Grad”, in *LSSV*, pp. 122–124, with a list of references.

3 In modern Serbian we use the word *podgrade*, not *podgradije*.

4 Štip (Serbian Cyrillic ШТИП), ancient Astibo, today a town in ex-Yugoslav Macedonia (North Macedonia).

5 Edited by A. Fostikov, *SSA* 13 (2014), pp. 92, 93.

6 See D. Kovačević-Kojić, “Podgrade”, in *LSSV*, pp. 534–535.

7 For more details see D. Kovačević-Kojić, *Gradska naselja srednjovekovne Bosne* [Towns in Mediaeval Bosnia] (Sarajevo 1978).

The expression *amborija* comes from the Greek word ἐμπόριον = market-town. It can be found in King Dušan's chrysobull (6 May 1336) confirming the donations of nobleman Hrelja to the monastery of Hilandar in Štip, a place where 50 villagers' families lived (Ѹ градоѸ Ципоу, оу амбориоу етасъ паричкихъ .н.).⁸

In documents from the 15th century, the word *varoš* (варошь) was used, coming from Hungarian *vár* = fortress. The sources also make use of the expressions *gradac*, *gradina* and *gradište*, as a place within the confines of a fortress.⁹

Besides the towns, Serbian legal sources mention market-towns (*trgovi*, singular = *trg*, тргъ),¹⁰ unfortified settlements where goods were exchanged.¹¹ Towns and market-towns are mentioned side by side in several articles of Dušan's Law Code (articles 7, 141, 168, 169, 184), so we can suggest that they had identical legal status.

The urban population in its entirety did not represent a unique, autonomous class (*tiers état*) in mediaeval Serbia, unlike in the Occidental European monarchies. Trying to explain the legal status of Serbian cities and its population we can speak of three different types of towns: towns in the interior of Serbia; maritime towns; and towns conquered from Byzantium.¹²

2 Towns in the Interior of Serbia

In the towns in the interior of Serbia there lived a Serbian population and foreigners (on foreigners see next chapter). The Serbian population living in towns was equal in legal rights to commoners. That fact can be clearly seen from article 94 of Dušan's Code that mentions a "commoner, whether in a city,

8 Edited by V. Petrović, *SSA* 13 (2014), p. 13. Cf. Ćirković, "Hreljin poklon Hilandaru", pp. 103–117.

9 See M. Popović, "Gradac", "Gradina" and "Gradište", in *LSSV*, pp. 124–125.

10 In modern Serbian *trg* primarily means a square, but also market and market-place.

11 See M. Živojinović, "Settlements with Marketplace Status", *ZRVI* 24–25 (1986), pp. 407–412, and D. Kovačević-Kojić, "Trg", in *LSSV*, pp. 737–739.

12 The list of works on Serbian mediaeval towns and urban society published prior to 1976 can be found in S. Ćirković's preface to the book of M. Dinić, *Srpske zemlje u srednjem veku* [Serbian Land in the Middle Ages] (Belgrade 1978), p. 26, n. 71. See also S. Ćirković, "Unfulfilled Autonomy: Urban Society in Serbia and Bosnia", in *The Urban Society of Eastern Europe in Premodern Times*, ed. B. Krekić (Berkeley-Los Angeles-London 1987), pp. 158–184, and the miscellany from a scholarly meeting on the social structure of Serbian mediaeval towns under the title *Socijalna struktura srpskih gradskih naselja (XII–XVIII vek)* (Smederevo-Beograd 1992).

county or mountain district” (себра оу градоу или оу ждпѣ или оу катонѣ).¹³ It was also very common for the monarch to give to the Church, as a present, estates in villages and in towns. In the charter presented to the monastery of Saint Archangels (Greek ἀρχάγγελος, “chief angel”) in Lesnovo (1347–1350),¹⁴ Tsar Dušan says that he gave 20 houses from the city of Štip to the church as a hereditary estate (Оузе светое царство ми оу градоу .к. коукъ, и то приложи светое царство ми подь црковъ Светаго Архистратига Лѣновскаго, да соу цркви съ вѣсми бацинами своими цю си имаю оу градоу томъ).¹⁵ The towns belonged to one of the monarch, the Church, or a nobleman, so the city population all had commoners’ feudal services, and this can clearly be seen from several decrees in Dušan’s Code. Article 169 mentions “the towns and market-towns of my Empire” (градовъ и тръговъ царства ми), and article 170 begins with the words: “In the towns of my Empire” (Оу градовѣх царства ми). In article 7 we read as follows: “And the Great Church¹⁶ shall appoint *protopops*¹⁷ in all cities and market-towns” (И да постави црковъ велика протопопѣ по вѣсѣхъ градовѣхъ и тръговѣхъ). Article 142 starts with the following words: “Any lord, greater or less, to whom I have given land and towns” (Властѣлаумъ и властѣлникѣмъ конѣмъ естъ дало царство ми землю и градовѣ). Similarly we read in article 184: “My lords and prefects who hold the towns and market-towns” (Властѣле и кѣфалѣ царства ми, кон дръже градовѣ и тръговѣ).¹⁸

The population of towns could not take part in the State Council’s session unlike in Occidental European feudal countries (see Chapter 9, section 3).

13 Burr, “The Code of Stephan Dušan”, p. 216; Novaković, *Zakonik*, p. 73; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

14 Lesnovo monastery was founded in 1341 by Serbian Despot Jovan (John) Oliver. The monastery is located at the edge of Lesnovo village. The closest town is Zletovo (in North Macedonia).

15 Novaković, *Zakonski spomenici*, p. 678, para. VII.

16 The expression “Great Church” usually refers to the Patriarchate of Constantinople, but in Dušan’s Code to the Serbian Patriarchate.

17 I.e. “chief priests”, from the Greek word πρῶτος = first, and Serbian *pop* (поп, попь, from Greek πάπας), the ordinary word for a parish priest. On *protopops*, see M. Koprivica, *Popovi i protopopovi srpske crkve u Srednjem veku* [“Chief Priests” and Parish Priests of Serbian Church in Middle Ages], Centar za crkvene studije [Centre for Church Studies] (Niš 2012).

18 Burr, “The Code of Stephan Dušan”, pp. 532, 199, 525, 530; Novaković, *Zakonik*, pp. 133, 134, 12, 109, 142; *Zakonik cara Stefana Dušana*, vol. III, pp. 148, 100, 138, 154.

3 Maritime Towns

The population of littoral cities had special legal status, such as Drivast (Drisht Castle), Ulcinj, Bar, Budva and Kotor.¹⁹ The legal rights of those townsmen were regulated by city statutes,²⁰ among which survive only the Statutes of Kotor and Budva. On the grounds of appellate jurisdiction, preserved in the Ragusan and Venetian Archives, about 20 decrees of Bar's Statute have been partly reconstructed.²¹ The Statute of Ulcinj has not survived, but it is mentioned in sources from the year 1330, together with the Statute of Bar. It is possible that its final edition was completed in the middle of the 14th century.²²

3.1 Kotor

The Community of Kotor had an autonomous identity within mediaeval Serbia, consisting of the town itself, its nearest surroundings called a "district", and four counties—*župa* (Grbalj, Bijela, Kruševica and Ledenice)—given by Serbian King Milutin (1306–1307). Practically, it was the territory of the modern Gulf of Boka Kotorska (Serbian Cyrillic *Бокa Коморска*, English "Bay of Kotor", Italian *Bocche di Cattaro*) in Montenegro, except the city of Herzeg Novi (Serbian Cyrillic *Херцег Нови*, Italian *Castelnuovo*, i.e. "New Castle").

During Serbian rule (1186–1370) Kotor had a large amount of autonomy, but the supreme power of the Serbian monarchs was recognized. The Serbian King had some influence on the election of the Prince (*Comes*, *Rector* or *Knez* in Serbian documents) of Kotor, but the sources do not say whether it was a real election or only the confirmation of the Prince. The Statute of Kotor says that the Prince (*Comes*, *Rector*) is *de mandato domini regis*. When the Prince was taking his oath, he promised to govern *ad honorem domini regis*.²³ Other magistrates, taking the oath, did not mention the Serbian King. However, the Serbian monarch could invite some respectable townsmen of Kotor to exercise some civil service in the name of the King. If they refused, they would pay 2000 perpers, the greatest fine provided by the City Statute. Half of this fine would be taken by the Serbian monarch. If the townsmen of Kotor leased the sale of salt

19 Drivast or Drisht Castle (Latin *Drivastum*, Serbian Cyrillic Дриваст, Albanian *Kalaja e Drishtit*) is a ruined castle above the modern Albanian village Drisht in Shkoder County (Albania). Ulcinj, Bar, Kotor and Budva are today in Montenegro.

20 See Ž. Bujuklić, "Statut", in *LSSV*, pp. 702–707, with a list of references.

21 S. Ćirković, "Srednji vijek" ["Middle Ages"], in *Bar pod Rumijom* [Bar under Rumija] (Bar 1984), pp. 9–34.

22 Bujuklić, in *LSSV*, p. 704.

23 *Statuta et leges civitatis Cathari*, cap. 23 (*Qualiter recipi debeat D. Comes a Communitate cum primo venerit*) and 26 (*De Sacramento Comitit*).

in Budva, contrary to the orders of the Satute, they had to pay half of the fine to the Serbian King, and the other half to their Community. In the year 1315 the City Community forbade the planting of grape-vines on the land of Saint George's monastery near Perast.²⁴ The culprit had to pay a fine of 200 perpers; 10 perpers of that had to be given to the Serbian King.²⁵ All other fines belonged to the Community of Kotor.

The relationships between social classes, Community legislation and the organization of justice were absolutely independent from the Serbian authorities. That fact is confirmed indirectly by the Law Code of Stefan Dušan as no article of the Code regulates the legal status of Kotor (or other maritime towns).

The population of Kotor was divided into several social classes: noblemen, commoners, villagers, serfs and slaves. Noblemen, commoners and slaves lived in the town, while villagers and serfs lived in the surrounding counties.

The Statute of Kotor calls noblemen *nobiles viri*, *nobilitas* and *sacra nobilitas* (cap. 2). In Serbian legal sources they were called *vlastela*, in the same way as the privileged class in mediaeval Serbia. For the first time in the copy of a charter from 1124, noblemen families were mentioned by name. Among 12 families mentioned in the document, three had names of Slavonic origin (Dabrazza, Nicha de Belez, Goislavus Derze), the rest were of Roman origin. It could be proof that the population of Kotor (especially the noblemen class) was of Roman origin, but in the 14th century the Slavonic element made up the great majority of townsmen. The relationships between noblemen and commoners were not legally regulated until 1361. From then onwards only noblemen could be members of city councils, or be higher magistrates and judges.

The great majority of the population of Kotor was made up of the class called *populus*, *illi de populo*, *populares* (commoners). Their occupations were as traders and artisans, but they could exercise the duties of lesser clerks, getting a monthly salary. In the 15th century 800 commoners' families and only 100 noblemen's lived in the town.

Legal documents inform us about the existence of slavery in Kotor. The slaves were the home servants (*servi*, *servae*, *ancillae*). They were the object of trade as well. The oldest trace of slavery trade in Kotor can be found in the donation of a certain Petar Crni to Saint Peter's church near Split (1080): Petar Crni says that he bought a slave from the townsmen of Kotor for 3 *solidus*.²⁶ In the

24 Perast (Serbian Cyrillic *Перацм*, Italian *Perasto*) is an old town in the Bay of Kotor, a few kilometres northwest of Kotor.

25 *Statuta et leges civitatis Cathari*, cap. 352, 311, 281.

26 F. Šišić, *Priručnik izvora hrvatske istorije* [Collection of Sources for Croatian History] (Zagreb 1914), p. 282.

treaty between Kotor and Dubrovnik from 1279, the trade of slaves between the two cities was allowed and the duties for the customs were fixed.²⁷ The Statute of Kotor does not mention the trade in slaves: only a father could sell his illegitimate daughter in case of her immoral behaviour (cap. 210). All other decrees of Kotor's Statute concerned the home servants. A man became a slave by birth or by purchase, while a slave might become free only by the will of his master. Very often the nobles granted freedom to their slaves by will. Such slaves were called *liberticii*, *liberati a servitute dominorum suorum* (cap. 220). If a slave (male or female) ran away from his master and was captured, the master could do with him as he wanted, without any responsibility to the City authorities (*possit facere de eo vel eis quidquid sibi placuerit et Curia nullam poenam sibi imponere possit*).²⁸ Anyone who hid a deserted slave had to pay the price of a slave, a fine of 10 *perpers* and wages for every day that a slave spent in his house.²⁹ Extremely strict were punishments were provided for slaves who dared hit a free man, especially a nobleman. If a slave hit a free man, who is not a nobleman, he would be beaten. If he assaulted a nobleman, he would be branded on the face, driven through the town, and finally flogged. If he attacked his peers (slaves), his master, instead of him, had to pay three *perpers*. If the master did not want to pay, the slave would be caned.³⁰

The population of villagers was called in the Statute *villani*, *villici* and *rustici*. Some of them were owners of land, but others worked as serfs on noblemen's lands. The obligations of the serfs were regulated by the particular contracts with the owners of the land. The contract could be written, but more frequently would have been verbal, and either limited by term (*ad tempus*) or perpetual (*in perpetuum*). The shortest term was three years, but in practice they were concluded every five, 10, 20 or even more years, and sometimes until the end of a tenant's life (*in vita mea tantum*).

Legislative power in Kotor was exercised by the Great Council (*Consilium Maius* or *Consilium Maius et Generale*), composed only of noblemen older than 18 years.³¹ The main executive power was conferred to the Small Council (*Concilium Minus*) of 13 members: the Prince (*Comes*, *Rector*) and 12 councillors, elected by the judges for a period of a year. After 1372, the number of councillors

27 J. Radonić, *Dubrovačka akta i povelje* I, 1 (Acta et diplomata ragusina, I, 1) (Belgrade 1934), p. 63.

28 *Statuta et leges civitatis Cathari*, cap. 221 (*De servis fugitivis*).

29 Ibid.

30 Cap. 119, *De servis, vel ancillis mittentibus manus in domines suos vel dominas*.

31 Cap. 35, *De iis qui possunt esse de Maiori Consilio, et quod Maius Consilium esse non possit si in eodem ad minus non fuerint Consiliarii quadraginta* (anno 1361).

was reduced to six.³² According to information given by the sources the whole population of Kotor made up the General Assembly (*Concio Publica*), which was convoked from time to time. However, from the same sources we cannot understand the relationship between the Assembly and two Councils. It seems that in the 14th century all decisions were made by two Councils and that the people, gathered on the city-square, formally gave their agreement by shouting *placet* ("we like") or *fiat, fiat* ("let it be").³³ The Council of the Invited (*Consilium Rogatorum*) was a new institution introduced in 1372. It had 15 members and very soon concentrated all power in its hands.³⁴

The chief of the administration was the Prince (*Comes, Rector*), without any particular influence, being only *primus inter pares*. Beside him the city had a great number of civil servants and notaries (*notarius*) whose task was to compose and keep documents.

Kotor had special autonomy in the judicial system, but we will discuss about that below (see Part 6).³⁵

3.2 Budva

The economic and political importance of Budva was negligible compared to the other littoral towns nearby, such as Dubrovnik, Kotor, Bar and Ulcinj. It was a small territory composed of a few square kilometres of land and of the small island called Saint Nicolas. The City Statute calls that territory *terra nostra*, but it clearly marks a difference between the town's core within the walls, called *citta*, and the surroundings usually designated as *distretto*—district.³⁶

Budva became a part of the Serbian mediaeval State between 1184 and 1186, when Stefan Nemanja conquered Bar, Ulcinj, Kotor and Budva. The town remained under Serbian rule until the death of Tsar Uroš (1371), but Budva practically became the manor of the feudal family Balšić in 1360. From that time to

32 Cap. 2, *De constitutione et electione consiliariorum Minoris Consilii, per quos debent eligi Officiales*.

33 As a matter of fact, the sources do not say that the decisions in Kotor were made that way, but we can conclude this by making an analogy with Dubrovnik, where we can find the information. See F. Rački, *Nutarnje stanje Hrvatske prije XII vijeka* [Internal State in Croatia before the 12th Century] (Zagreb 1894), p. 187, and M. Rešetar, "Dubrovačko Veliko vijeće" ("Ragusan Great Council"), *Mjesečna ilustrovana revija 1* (Dubrovnik 1929), p. 3.

34 Cap. 39.

35 On Kotor, see the study by I. Sindik, *Komunalno uređenje Kotora od druge polovine XII do početka XV stoljeća* [The Municipal Organization of Kotor from the Second Half of the 12th Century until the Beginning of the 15th Century] (Belgrade 1950).

36 On Budva see Ž. Bujuklić, *Pravno uređenje srednjovekovne budvanske komune* [Legal Organization of Mediaeval Budva's Community] (Belgrade 2014).

1442 Budva changed its rulers eight times, and then for the third and final time was occupied by the Republic of Venice.³⁷

Although Budva was a small community, the town had a municipal organization like the other maritime cities. Nevertheless, its autonomy was much lesser than Kotor's.³⁸ The relationship between the Serbian Tsar and the City of Budva was fixed in four chapters at the beginning of the Statute. When the Lord Tsar (*misser lo imperador*) came in the town he had a right of three meals (*tre manzari*), which represents the translation of the Serbian feudal duty called *obrok* (ЎБРОКЪ). The Tsar's herald (*nuntio*) and ambassador (*ambasador*) had same right. The main tribute of Budva, due to the Serbian Tsar, was called *acrostico* (ἀκρόστιχον, АКРОСТИКЪ, *acrostico*),³⁹ and it was mentioned three times in the first chapter of the Statute. The first time, it is stated that 5 perpers from the *acrostico* belong to the City Prince (*Conte*), who was the Tsar's servant, appointed by the Serbian ruler. The Community had the obligation to give 10 perpers to the Tsar's treasurer when he collected the *acrostico*. And finally, Budva had to give once a year 100 perpers minus 4 dinars to the Tsar.

Budva had to exercise temporary military service, but only when the Serbian Tsar went into the area between Skadar (modern *Shkodër* or *Shkodra* in Albania),⁴⁰ Kotor and Zeta.⁴¹ In that case, the City of Budva had to give 50 soldiers at the Tsar's disposition.

Autonomy in the judicial system did not extend to the crimes of treason (*infedeltade*), homicide (*homicidio*) and traspases concerning slaves, male or female (*de servo et de serva*), and horses, stolen or dead (*de cavallo rubbato o morto*). All those cases were in the jurisdiction of the Serbian (Imperial) court.⁴²

37 See I. Sindik, "Odnos grada Budve prema vladarima iz dinastije Nemanjića" ["Relation of the City of Budva to the Monarchs from Nemanjić's Dynasty"], *IC* VII (1957), p. 23, n. 1.

38 See Bujuklić, *Pravno uređenje srednjovekovne budvanske komune*, p. 25, n. 3.

39 See Đ. Bubalo, "Akrostih", in *LSSV*, pp. 4–5.

40 Serbian Cyrillic Скадар, Latin *Scodra*, Turkish *İşkodra* or *Arnavut İşkenderiyesi*, Italian *Scutari*.

41 The Principality of Zeta (Serbian Cyrillic Кнежевина Зета), in modern-day Montenegro, is the historiographical name for a mediaeval State centred around the Lake of Skadar and the valley of the River Zeta (its source is under Mount Vojnik, and flows eastwards for 91 km until it joins the Morača River, just north of Podgorica). The Serbian crown land of Zeta had become virtually self-governed during the fall of the Serbian Empire, when the Balšić family took control of the region by eliminating opponents in the area after 1360. After the extinction of the Balšić dynasty, Zeta was ruled by the families Lazarević, Branković and Crnojević in succession from the second half of the 14th century until Ottoman conquest in 1498.

42 *Stat. Bud.*, cap. 3. On Imperial courts in Serbia see Part 6.

Legislative power in Budva was exercised by the City Council, called the Great Council (*Consiglio Maggiore*) during Venetian rule. It remains unclear whether members of the Council could only be noblemen (*gentil'huomeni*) or any man living in the town. During Serbian rule the Statute mentions the institution being composed of eight councillors (*consiglieri*) and three judges (*giudici*) whose task was to dispute on city taxes and incomes. When Budva became a part of Venice, executive power was conferred to the Small Council (*Consiglio Piccolo*). The Prince (*Conte*) was a foreigner, who governed over the City in the name of the Serbian Tsar and did not have to live in the town. However, if he would live there, the Community would have to provide him a house for living. When he came to town to take his duty he had a right of three meals (*tre manzari*), like the Tsar, his herald and his ambassador. The Prince had to swear that he would respect all old customs and decrees written in the Statute. If he refused to do that, the Community was not obliged to accept him.

The Statute also mentions judges (*giudici*) and a long list of other civil servants.⁴³

4 Towns Conquered from Byzantium

Tsar Dušan confirmed to the towns conquered from Byzantium all the privileges they had under the Byzantine Emperors. Article 124 of the Code states: "Greek towns which the Lord Tsar hath taken, whatsoever chrysobulls and decrees⁴⁴ have been granted to them, whatsoever they have and hold up to the time of this Council,⁴⁵ let them hold, and it is confirmed to them and let no man take anything from them" (Градѡвъ грѣчьцѣи коєхъ єсть прїєль господинь царь, цю имъ єсть оучинилъ, хрисовѣле и простаг'ме, цю си имаю гдѣ и дрѣже до сїегазїи сѣбора, тозїи да си дрѣже и да имъ єсть тврѣдо, и да им се не оузме ницю).⁴⁶ The same decree can be found in the second part of the Code in article 137: "My chrysobulls which I have granted to the towns of my Empire, that which is written in them may not be changed, even by the Lord Tsar himself, nor by any other man. The charters are firm" (Хрисоволи царства ми цю сѣ оучинїени градо-

43 See Bujuklić, *Pravno uređenje srednjovekovne budvanske komune*, pp. 56–67.

44 I.e. *prostagme*, from Greek πρόσταγμα, imperial order which has the power of law.

45 The Council (*Sabor*, сѣборъ) from 21 May 1349, when the Law Code was proclaimed.

46 Burr, "The Code of Stephan Dušan", p. 521; Novaković, *Zakonik*, p. 95; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

ВОМЪ ЦАРСТВА МИ, ЦЮ ИМЪ ПИШЕ ДА ИМЪ Н'БЕСТЬ ВОЛ'НЬ ПОТВОРИТИ НИ ГОСПОДИНЬ ЦАРЬ, НИ ИНЫ КТО. ДА СЪ ХРИСОВОЛЫ ТВЕРЬДЫ).⁴⁷ As article 137 does not explicitly mention Greek (Byzantine) towns are not explicitly mentioned, it could be posited that it also concerns the rights of Serbian towns. However, Taranovski has pointed out⁴⁸ that it only refers to the Greek (Byzantine) towns, as is confirmed by article 176, entitled "On Towns" (С) ГРАДОВѢХЪ):

All towns which are in my dominions shall be in relation to the law in all things as they were in the days of the first Tsars. For suits which townsmen have between themselves, let them be judged before the prefects of the towns. Or before the Church courts. And if a man from the country have a case with a citizen let him sue before the prefect of the town and before the Church and the clergy. According to the law.

Градове вѣси по земли царства ми, да сѣ на законѣ ѡ вѣсѣмъ како сѣ били оу прѣвыхъ царь; а за соудове цю имаю мегю собомъ, да се соудѣ прѣдъ владалци град'скими, и прѣдъ црковнымъ клиросомъ, а кто жоуплянинъ при гражданина, да га при прѣдъ владалцемъ град'скимъ, и прѣдъ црковнымъ, и прѣдъ клиросомъ по закону.⁴⁹

The words "as they were in the times of the first Tsars" demonstrate that article 176 concerned Greek (Byzantine) towns, not towns generally (as it was written in the title). "The first Tsars" are the Byzantine Emperors who ruled over those towns before Dušan's conquest. Moreover, the article mentions the presence of ecclesiastical authorities in city courts, a characteristic of Byzantine towns.⁵⁰

Although the citizenry did not represent an autonomous class in mediaeval Serbia, Tsar Dušan several times in his Code showed care for towns as military, administrative and economic centres. We have already spoken about the duty of the building of towns (article 127). A few times the Code mentions a town as the administrative centre of a county—*župa* (articles 7, 63, 142, 184). Art-

47 Burr, "The Code of Stephan Dušan", p. 524; Novaković, *Zakonik*, p. 104; *Zakonik cara Stefana Dušana*, vol. III, p. 138.

48 Taranovski, *Istorija*, vol. I, p. 87.

49 Burr, "The Code of Stephan Dušan", p. 534; Novaković, *Zakonik*, pp. 137–138; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

50 See M. Živojinović, "Sudstvo u grčkim oblastima srpskog carstva" ["The Judicial System in the Greek Territories of the Serbian Empire"], *ZRVI* 10 (1967), pp. 197–249.

icle 120 protects the right of free commerce: “An imperial customs officer may not hinder nor detain any man in order to sell his goods at a low price: to every man the markets are free and every man may take his goods wheresoever he will” (Царинникъ царевъ да нѣсть вол’нѣ забавити, или задрѣжати кога чловека, да мѣ коуплю продаестъ оу без’цѣнїе; вол’но да проходи въсакы по тръговѣхъ, и волым да походы въсакы своимъ коуплым). Article 121 is similar: “And no lord, either small or great, nor any other man may detain and hold as security his own or other merchants, to prevent them from proceeding to the imperial markets. Let every man proceed freely” (Да нѣсть вол’нѣ властѣлинъ ни малъ ни великъ, никто любо задрѣжати и зарочичити свое людїи или ине тръговѣце да не гредоу на тръговѣ царевѣ да гредѣ въсакъ свободно). And article 122 orders: “And if any lord detain a merchant, let him pay three hundred perpers: and if a customs officer detain him, let him pay three hundred perpers” (Ако ли кои властѣлинъ задрѣжи тръговѣца, да плати, .ѣ. перьперъ; ако ли га царинникъ задрѣжи, да плати .ѣ. перьперъ).⁵¹ As can be seen, the market-towns were centres of economic life. Money could be minted only in towns, as was ordered by articles 168, 169 and 170:

Article 168 “Goldsmiths may not be in the counties and the land of my Empire, but in the market-towns, where I have ordered dinars to be minted” (Златара оу жѣпахъ и оу земли царства ми, нигдѣ да нѣсть, развѣ оу тръговѣхъ гдѣ кѣсть поставило царство ми динаре ковати).

Article 169 “And if there be found a goldsmith outside the towns and market-towns of my Empire in any village, that village shall be scattered and the goldsmith branded: and if there be a goldsmith in a town who coins dinars secretly, he shall be branded and the town shall pay such a fine as the Tsar says” (Аще ли се вѣрѣте златарѣ вѣсѣнѣ градовѣ и тръговѣ царства ми оу коемъ селѣ; да се този село распе, и златарѣ иждеже. Ако се вѣрѣте златарѣ оу градоу ковѣ динаре таино, да се златарѣ иждеже и градѣ да плати глобоу цю рече царѣ).

Article 170 “Let the goldsmiths be in the towns of my Empire to strike money and for other purposes” (Оу градовѣхъ царства ми да стоѣ златарїе, и да ковѣ и ине потрѣбе).⁵²

51 Burr, “The Code of Stephan Dušan”, p. 520; Novaković, *Zakonik*, pp. 92–94; *Zakonik cara Stefana Dušana*, vol. III, p. 132.

52 Burr, “The Code of Stephan Dušan”, p. 532; Novaković, *Zakonik*, pp. 133–134; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

Finally, article 125 exempts the towns of the duty of maintenance of officials:

Towns are not liable for the maintenance of officials. When a countryman come, let him go to the inn, either small or great, and let him hand over his horse and all that he hath, that the innkeeper take charge for him entirely. And when the guest leaves, let the innkeeper hand to him all that he hath received from him; and if anything be lost, let him pay its full value.

Градовомъ да нѣсть присѣлице; развѣ кои иде жоуплянинъ да ходи къ станіанинѣ, или малъ или великъ, да мѣ прѣда конь и станъ вѣсь; да га съблюдѣ станіанинъ съ вѣсѣмъ; и кѣда си поиде ѡнъ зѣи гостъ, да моу прѣда станіанинъ вѣсе цю мѣ боудѣ прѣель; ако ли моу боудѣ цю погынѣло вѣсе да мѣ плати.⁵³

53 Burr, "The Code of Stephan Dušan", p. 521; Novaković, *Zakonik*, p. 96; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

Foreigners (Stranci, Странци)

In mediaeval Serbia there were a high number of foreigners, living there either temporarily or permanently. Most foreigners were engaged in trade (Ragusans) and mining (Germans, Saxons), but some of were the King's (Tsar's) servants and others were mercenaries in the army.¹

1 Ragusan Merchants

Trade in the mediaeval Serbia was controlled by the Ragusans (Dubrovčani), who obtained privileges from Serbian rulers from the year 1186 onwards (peace-treaty between Nemanja and his brother Miroslav with Dubrovnik). First of all, freedom of movement was guaranteed to Ragusan merchants. Every disturbance (ЗАБАВА) of their business activities was strictly punished. King Dušan, in the treaty with Dubrovnik from 1334, promised that commercial goods would be safe:

My Royal Majesty has created the mercy to all Ragusan merchants who walk through My Royal Land and He promised to them, in the name of Our Lord and the Most Pure Virgin, to take from them nothing without purchase, neither My Royal Prince, nor noblemen in My Royal State, nor even Me the King, to take nothing by force and without purchase, only if they sell; they can freely walk through My Royal Land and nothing can be taken from them by force from My Royal Majesty neither on fairs, nor in any market-town in My Royal Land: they have only to go on market-places and what they sell by their own will to My Royal Majesty, My Royal Majesty will pay them like the other men. And on My Royal faith, nothing is to be changed from what I have written.

Створи милость кралеѣство ми всемъ тръговцемъ доубровѣчкимъ, кои ходѣ по земли кралеѣства ми, и такози имъ се обѣта кралеѣство ми въ Господа Бога и въ прѣчистую Матерь Божию, да имъ не ѹзме ница кралеѣство ми

¹ See S. Šarkić, "Pravni položaj stranaca u srednjovekovnoj Srbiji" ["Legal Position of Foreigners in Mediaeval Serbia"], *ZRPFS* 45:3 (2011), pp. 53–67.

БЕЗЪ КОУПА, НИ КНЕЗЪ КРАЛЕВЪСТВА МИ, НИ КИ ВЛАСТЕЛИНЪ ОУ ЗЕМЛИ КРАЛЕВЪСТВА МИ ДА НЕ ОУЗМЕ НИЦА БЕЗЪ КОУПА, НИ САМО КРАЛЕВЪСТВО МИ ДА НЕ ОУЗМЕ СИЛОМЪ БЕЗЪ КОУПА, РАЗВѢ ДА СИ ПРОДАЮ, СВОБОДНО ХОДЕ ПО ЗЕМЛИ КРАЛЕВЪСТВА МИ, НИ НА ПАНАГЮРИ, НИ ОУ КОЕМЪ ТРЪГОУ ОУ ЗЕМЛИ КРАЛЕВЪСТВА МИ, ДА ИМЪ НИЦА НЕ ОУЗМЕ СИЛОМЪ КРАЛЕВЪСТВО МИ, РАЗВѢ ДА ХОДЕ ПО ТРЪГОВѢХЪ, И ЦЮ СВООМЪ ВОЛОМЪ ПРОДАЮ КРАЛЕВЪСТВОУ МИ, ДА ИМЪ КРАЛЕВЪСТВО МИ ПЛАКІА КОУПЪ КАКО И ПРОЧИ ЛЮДИНЕ. И НА МОЮ ВѢРОУ НА КРАЛЕВОУ ДА СЕ НИ ОУ ЧЕМЪ НЕ ПОТВОРИ КРАЛЕВЪСТВО МИ, ЦЮ СЫМЪ ПИСАЛЪ).²

In the treaty of Tsar Dušan from 1349, the privileges were confirmed and even enlarged with the following observation: “only not to carry the weapon” (ТЬКМО ВРЪЖИНА ДА НЕ НОСѢ).³ This means that trade in weapons was forbidden; if the Ragusan merchants did not respect that order, their goods would be taken away (КТО ЛИ СЕ ВЕРЕТЕ ПОНЕСѢ ВРЪЖИНА Ѹ ИНѢ ЗЕМ’ЛЮ, ДА МѢ СЕ ВСЕ ТОЗИ ВРЪЖИЕ ѸЗМЕ).⁴

The Ragusans (Dubrovčani) had some privileges in the judiciary system too (see Part 6). *Udava* and *izam*, two kinds of reprisals of Ragusan merchants, were forbidden to Serbian subjects. *Udava* means arbitrary capture of a debtor and *izam* collection of debt by force (for more details see Chapter 6).

Enjoying legal protection in Serbia, Ragusans (Dubrovčani) had to respect peace in the State. In case they did not respect it, they were given a term of three months to leave Serbia and take their property. That order can be found in the treaty of King Dragutin from 1281: “If they do something wrong to My Royal Land and they do not apologise to Me, let them give a term of three months, in purpose that the merchants went in the town [Dubrovnik] with everything of their own” (АКО ЛИ ЦЮ ПОГРѢШЕ ЗЕМЛИ КРАЛЕВЪСТВА МИ И НЕ ИСПРАВЕ МИ СЕ, ДА ИМ’ СЕ ДА ВѢДѢНИЕ ТРЪМИ МѢСЕЦИ, ІАКО СИ МОГѢ ТРЪЖЬНИЦИ ИХЪ УТИТИ Ѹ ГРАДЪ СЪ ВСѢМЪ СВОИМЪ).⁵ According to the provisions of Tsar Dušan’s treaty (20 September 1349), in case of war between Serbia and Dubrovnik, Ragusan merchants had a term of six months to leave Serbia peacefully (И АКО СЕ ЦАРЪСТВО МИ С’ВАДИ З ДЪБРОВНИКОМЪ, ЦЮ СЕ ВЕРЕТАЮ ДЪБРОВЧАНѢ ПО ЗЕМЛИ ЦАРЪСТВА МИ И КРАЛЕВѢ ДА ИМ СЕ ПОСТАВИ РОКЪ ЗА .Ṣ. МЕСЕЦЪ ДА СЕ ИСПРАТЕ СВОБОДНО БЕЗАБАВѢ ДА ПОХОДЕ).⁶

The most important privilege they had was common responsibility for any damage caused to Ragusan merchants. In the contract of Great Župan Stefan Nemanjić (1205), the responsibility was on the county (*župa*). The county

² Novaković, *Zakonski spomenici*, pp. 166–167.

³ Edited by D. Ječmenica, *SSA II* (2012), p. 39.

⁴ Ibid.

⁵ Mošin, Ćirković, and Sindik, *Zbornik*, p. 266.

⁶ Edited by D. Ječmenica, *SSA II* (2012), pp. 39–40.

(*župa*) had the options of either delivering the culprit or giving an indemnity (Оу кои ли се жоуѣ цю испакости, тази жоупа вола да да кривыце вола да плати).⁷ However, in King Milutin's treaty (14 September 1302), responsibility was on the nearest village. If the village could not pay, the King himself would give the indemnity (Да при конимъ ихъ селѣ ч'тета нанде, да плати село ближ'нѣ. Ако село не плати, да п'лати кралевѣство ми).⁸ The treaty of Stefan Dečanski (25 March 1326), beside nearest villages, mentions the responsibility of the town, as well. If those communities could not pay, the monarch himself would compensate the damage from his private property (Аке ли им' се коѣ ч'тета љчини ѡнѣдези, да имъ сплате ѡкол'на села вола градъ кои бѣде. Не сплати ли имъ, да имъ кралевѣство ми плати изъ мое кѣкѣ).⁹ Tsar Dušan, in his treaty from 1349, changed the order of things: the indemnity would be given directly from Tsar, and after that the Tsar would ask for compensation from the trespasser (Ако ли се ѡбреце кто љземъ цю любо по силѣ љ земли царѣства ми и кралевѣ, в'се този да плати царѣство ми ѡномѣзи комѣ бѣде цю љзетомъ, а тогази крив'ца да ице царѣство ми и љз'ме на немъ, кто бѣде љзель и љчинилъ зломъ кое).¹⁰

King Milutin, in the treaty of 1302, exempts the Ragusans from military service (и да не ходѣ на воинѣ), and from building towns and giving guards (и града да не работая ни га блюде). It was obvious that this contract spoke of Ragusans living permanently in Serbia, because in the same document we can read as follows: "And their houses, not to be taken, neither from King, nor from noblemen" (и кѣке да им' се не пегате ни ѡт крала ни ѡд властель).¹¹ However, in the treaty of Prince (*Knez*) Lazar with Dubrovnik from 9 January 1387 it says: "And if any Ragusan has hereditary estate in Novo Brdo¹² let him built and keep the town; those who are guests and do not have hereditary estate, let them be according to their will" (и кои се ѣ Дѣбровчанинъ забацинилъ љ ѡбѡмъ брьдѣ, тѣзи да зиѣ градъ и да чѣва; кто ли сѣ гостие и не сѣ забацинили да имъ ѣ на вѡли).¹³ This means that those Ragusans who were the proprietors of estates in Novo Brdo had the feudal duty of building towns (*gradozidanije*) and giving guards (*gradobljudeniye*). In Serbia, Ragusans were exempt from so-called *ius albinagii*—the right of the King to pilfer a foreigner's property after death.

7 Novaković, *Zakonski spomenici*, 136; Mošin, Ćirković, and Sindik, *Zbornik*, p. 454. The editors of *Zbornik* think that the treaty was concluded between 1313 and 1316 and should be assigned to King Dragutin.

8 Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

9 Edited by N. Porčić, *SSA* 6 (2007), p. 20.

10 Edited by D. Ječmenica, *SSA* 11 (2012), pp. 38–39.

11 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 344, 345.

12 Novo Brdo was the most important mining centre in mediaeval Serbia.

13 Edited by Mladevović, *Povelje kneza Lazara*, p. 193.

This is confirmed in the abovementioned treaty: "And if any Ragusan dies in the country that of My Lordship, his property does not belong to My Lordship, neither to my headman, nor to ... Before he dies, he can transfer his property to any Ragusan, living in my land" (и ако се слѣчи смрът комѣ Дѣбровчанинѣ ѿ земли господства ми, цю ѣ негова иманиѣ, да за тои не има посла господство ми ни кефалиѣ ... тъкмо да сие комѣ га да внзи на смръти Дѣбровчанинѣ).¹⁴ According to the text of this treaty, any Ragusan living in Serbia could have left a will or nominate some of his fellow townsmen who would later deliver the estate to his heirs.¹⁵

2 German Miners (*sasi*, саси)

The miners in Serbia were of German (Saxon) origin and that is the reason why people called them *Sasi* (Saxons). They came to Serbia from Hungary in the middle of the 13th century.¹⁶ We do not know much about their privileges. In the treaty with Dubrovnik of 1302, King Milutin said that the Ragusans had to pay a fine for a murder (so-called *vražda*) like the Saxons (Ако ли крѣвь ѿчини дѣтикъ, да га пода господарь; ако ли га не пода, да да плати господарь в'раждѣ, како и саси плакѣю).¹⁷ According to this information can we conclude that the Saxons (*Sasi*) had the same privileges as the Ragusans?

14 Novaković, *Zakonski spomenici*, p. 202, para. XIX; Mladenović, *Povelje kneza Lazara*, p. 193.

15 On the history of Dubrovnik and its relationship with Serbia, see C. Jireček, "Die Bedeutung von Ragusa in der Handelsgeschichte des Mittelalters", *Almanach der kaiserlichen Akademie der Wissenschaften in Wien* (1899), pp. 367–452; G. Čremošnik, "Uvozna trgovina Srbije god. 1282 i 1283" ["Serbian Import Trade of the Years 1282 and 1283"], *Spomenik SKA LXII drugi razred* 51 (1925), pp. 59–68; Kos, "Dubrovačko-srpski ugovori do sredine 13-og veka"; Jasinski, "Ugovori srpskih vladara sa Dubrovnikom kao spomenici starog srpskog prava"; M. Dinić, "Dubrovačka srednjovekovna karavanska trgovina" ["Ragusan Mediaeval Caravan Trade"], *JIC* 3 (1937), pp. 119–146 = *Srpske zemlje u srednjem veku* [Serbian Lands in the Middle Ages] (Belgrade 1978), pp. 305–330; B. Krekić, *Dubrovnik in the 14th and 15th Centuries. A City between East and West* (Norman OK 1972) and *Dubrovnik, Italy and Balkans in the Late Middle Ages* (London 1980); V. Foretić, *Povijest Dubrovnika do 1808. Prvi dio: Od osnutka do 1526* [History of Dubrovnik until 1808. First Part: From the Foundation to 1526] (Zagreb 1980); A. Di Vittorio, *Ragusa e il Mediterraneo: roulo e funzioni di una repubblica marinara tra medioevo ed eta moderna* (Bari 1990).

16 The exact date of their arrival in Serbia is not known, but the first mention of *Sasi* can be found in King Uroš's charter to the monastery of Holy Virgin in the City of Ston (c.1252). In the text we read as follows: и оуѣ врьдо на д сасе (Mošin, Ćirković, and Sindik, *Zbornik*, p. 197).

17 Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

Dušan's Law Code (article 123) mentions only one privilege of Saxons: a right to clear the forests for their business:

On market towns: Wheresoever Saxons have cleared forest up to the date of this Council, that land let them have. And if they have unlawfully taken any land from any lord, let the lord sue them according to the law of Sainted King [King Milutin, Tsar's grandfather]. But from henceforth a Saxon may not clear and that forest which he clears shall not belong to him, nor shall they settle people there, but it shall stand empty, so that the forest grow. Let no man forbid a Saxon so much timber as he need for his business, so much let him fell.

О ТРЪГОВѢХЪ ЦЮ СѢ КОУДѢ ПОСЕКАЛИ САСИ ГОРѢ, ДО СІЕГАЗІИ СЪВОРА, ТОУЗІИ ЗЕМЛЮ ДА СИ ИМАЮ. АКО СѢ КОМУ ВЛАСТѢЛИНѢ БЕЗЪ ПРАВЪДЫ ОУЗЕЛИ ЗЕМЛЮ, ДА СЕ СОУДѢ СЪ НИМЪ ВЛАСТѢЛЕ ЗАКОНОМЪ СВЕТАГО КРАЛЯ. А ОУТЪ СЪДА НАПРѢДА САСИНѢ ДА НѢ СѢЧЕ; А ЦЮ СЕЧЕ УНОГАЗІИ ДА НЕ ТЕЖИ, НИ ЛЮДІИ ДА НЕ САГА, ТЪКЪМО ДА СТОИ ПѢСТА ДА РАСТЕ ГОРА. НИКТО ДА НЕ ЗАБРАНИ САСИНѢ ГОРѢ, КОЛИКО ІЕСТЬ ТРѢВЕ ТРЪГѢ ТОЛИКОЗІИ ДА СѢЧЕ.¹⁸

As we can see, the Saxons who were engaged in mining and metallurgy used to clear forests and squat in the same way as the original Serbs did. Tsar Dušan was determined to stop this, though at the same time allowed them to take timber they needed for fuel or construction work.¹⁹

3 Other Foreigners

Beside Ragusans and Saxons, other foreigners lived in Serbia as well, but we only have fragmentary information about the privileges they had. Saint George's charter, for example, says that everyone has a right to come to a fair (*panadur*, *панагѹрь*) and sell his goods, be it Greek, Bulgarian, Serb, Latin,

18 Burr, "The Code of Stephan Dušan", pp. 520–521; Novaković, *Zakonik*, p. 94; *Zakonik cara Stefana Dušana*, vol. III, p. 132.

19 On mining in mediaeval Serbia see M. Dinić, *Za istoriju rudarstva u srednjovekovnoj Srbiji i Bosni 1–11* [On the History of Mining in Mediaeval Serbia and Bosnia 1–11] (Belgrade 1955); D. Kovačević, "Dans la Serbie et la Bosnie médiévales: les mines d'or et d'argent", *Annales, Economies, Société, Civilisation* 2 (1960), pp. 248–258; S. Ćirković, "Production of Gold, Silver and Copper in the Central Parts of the Balkans, Precious Metals in the Age of Expansion", *Beiträge zur Wirtschaftsgeschichte* 2 (1979), pp. 41–69, and "Dubrovčani kao preduzetnici u rudarstvu Srbije i Bosne" ["Ragusans as the Entrepreneurs in Mining of

Albanian or Vlach (И всеки кто приходи на нь, любо Гръкъ или Българинъ, или Срѣбинъ, Латинъ, Арбанасинъ, Влахъ).²⁰ That certainly means that foreigners enjoyed the right of free commerce. Article 173 of Dušan's Code mentions among the noblemen Greeks, Germans and Serbs, so we can conclude that foreigners had admission to the most privileged class. Foreigners were even present at the Imperial Court, and as the Tsar's servants they got immunity charters, such as was the case with the Ragusan nobleman Maroje Gučetić and the Byzantine George Phokopoulos.²¹ It is well known that the Serbian rulers had a mercenary army, but we do not know anything for certain about the legal status of those soldiers.²²

Serbia and Bosnia"] *Acta historico-oeconomica Iugoslaviae* 6 (1979), pp. 1–20; S. Ćirković, D. Kovačević-Kojić, and R. Ćuk, *Staro srpsko rudarstvo* [Old Serbian Mining] (Belgrade 2002). See also S. Ćirković, "Sasi", in *LSSV*, p. 649.

20 Mošin, Ćirković, and Sindik, *Zbornik*, p. 328.

21 D. Ječmenica, "Povelja cara Stefana Dušana za Dubrovčanina Maroja Gučetića" ["Charter of the Emperor Stefan Dušan to Maroje Gučetić from Ragusa"], *SSA* 12 (2013), pp. 67–78; Solovjev and Mošin, *Diplomata graeca*, pp. 180–182.

22 See Novaković, *Stara srpska vojska*; G. Škrivanić, "O najamničkoj vojsci u srednjovekovnoj Srbiji" ["On the Mercenary Army in Mediaeval Serbia"], *Vojnoistorijski glasnik* 1 (1954), pp. 80–93; N. Stijepović, *Srpska feudalna vojska* [Serbian Feudal Army] (Belgrade 1954); A. Veselinović, "Vojska u srednjovekovnoj Srbiji" ["The Army in Mediaeval Serbia"], *Vojnoistorijski glasnik* 1–2 (1994), pp. 384–422.

PART 3

Constitutional Law



Constitutional Ideology

1 Dušan's Law Code—Constitution or Not?

Modern constitutions came into being at the end of the 18th century as an accomplishment of bourgeois revolutions, but in the science of constitutional law there is an opinion that mankind has exclusively lived under a regime of constitutions in a material sense since ancient times up to the end of the 18th century.¹ “With the exception of a few texts, very precious because they were rare, like *Magna Charta* (1215), the *Bill of Rights* (1689) or the *Act of Settlement* (1701) in England, political organization of the individual States was established by the end of the 18th century exclusively through custom.”² England has been considered the cradle of modern constitutionality, and the just mentioned documents have been quoted as examples in almost all textbooks and tractates on constitutions. In this way a great “injustice” has been done to some mediaeval States which, frequently wrongly, have been considered absolutist and despotic, but in which elements of constitutionality were certainly present. In the first place, we think of Byzantium, whose numerous law texts contained ideas which even today would belong to a constitution. As Serbian mediaeval law was under the great influence of Byzantine law, we could now pose the question as to whether there were elements of constitutionality in mediaeval Serbia too, or more concretely: can the Code of Stefan Dušan be considered as a kind of constitution of the Serbian State? At the end of the 19th and beginning of 20th centuries, historians gave the affirmative answer to the second part of this question. According to Dragiša Mijušković,³ the Code of Stefan Dušan is a kind of constitution of a mediaeval State (*neka vrsta ustava naše srednjovekovne države*), and some other historians agreed with him.⁴ A

1 See M. Jovičić, *O ustavu* [On Constitution] (Belgrade 1977), p. 14. Cf. pp. 9–28.

2 G. Burdeau, *Traité de science politique, tome IV: Le statut de pouvoir dans l'État* (Paris 1969), p. 12.

3 Mijušković, “Sistem Dušanovog zakonika”, especially p. 160.

4 Gerasimović, *Staro srpsko pravo*, pp. 3, 66–67; S. Đorić, “Osnovna pitanja o Dušanovom zakoniku” [“The Basic Questions on Dušan's Law Code”], *APDN* 17.3 (1914), p. 204; D. Alimpić, *Upravne oblasti u staroj srpskoj carevini* [Administrative Regions in the Old Serbian Empire] (Belgrade 1921), p. 9; T. Taranovski, “Načelo zakonitosti u Zakoniku cara Stefana Dušana” [“The Principle of Legality in Dušan's Law Code”], *Spomenica pedesetogodišnjice profesorskog rada S.M. Lozanića* (Belgrade 1922), p. 146, where besides accepting Mijušković's opinion he says

similar opinion was held by Stojan Novaković. He wrote that “according to all Byzantine laws, translated earlier or at that time, the Code of Stefan Dušan is a constitutional imperial document which affirms them and protects them from all present and future abuses” (*prema svim vizantijskim zakonima, prevedenim iz ranije ili u to isto vreme, Dušanov Zakonik stoji kao ustavni carski akt koji ih utvrđuje i štiti od svih dotadašnjih ili budućih zloupotreba*).⁵ But, on the contrary, according to Jaša Prodanović “Dušan’s laws do not have character of genuine constitutional laws, because Serbia was an absolutist monarchy” (*Dušanovi zakoni nemaju karakter pravih ustavnih zakona, jer je Srbija bila apsolutna monarhija*). However, at the same time the author recognizes that some of the articles of Stefan Dušan’s Code could be put into today’s constitution or constitutional law, concluding: “But in an absolutist monarchy there is no place for a constitution. Not only executive, but also legislative, and to certain extend, judiciary power belonged to the ruler” (*Ali o ustavu ne može biti reči u apsolutnoj monarhiji. Ne samo upravna, nego i zakonodavna, pa donekle i sudska vlast pripadala je vladaru*).⁶

The articles of the Code of Stefan Dušan that, from a modern constitutional-legal view, are of the utmost validity are 171, 172 and 105.

Article 105 from the first part of the Code, proclaimed in 1349, reads: “Imperial charters⁷ which are produced before the judges in any matter, which my Code contradicts, and which the court finds invalid shall be brought and submitted to me” (Книге цареве које приносе прѣд соудѣ за цю любо, тѣре их потвори законикъ царства ми, цю съмъ записалъ кою любо книгоу; внезѣи книзе које потвори соудъ, тезѣи книзе да оузмоу соудѣ и да их принесѣ прѣд царство ми).⁸

that “the Code should have been seen as one of those fundamental laws (*leges fundamentales*) that also existed in the Middle Ages”, and most recently M. Kostrenčić, “Dušanov zakonik kao odraz stvarnosti svoga vremena” [“Dušan’s Law Code as a Reflection of the Reality of its Epoch”], in *Zbornik u čast šeste stogodišnjice Zakonika cara Dušana I* (Belgrade 1951), p. 41; B. Blagoev, “Primat zakona u Dušanovom Zakoniku” [“Priority of Law in Dušan’s Law Code”], *APFB* 2–3 (1961), pp. 177–184, and D. Bogdanović, “Dušanovo zakonodavstvo” [“Dušan’s Legislation”], in *ISN*, vol. I (Belgrade 1981), p. 565.

5 Novaković, *Sintagma*, p. xxviii.

6 J. Prodanović, *Ustavni razvitak i ustavne borbe u Srbiji* [Constitutional Development and Constitutional Struggles in Serbia] (Belgrade 1936), p. 7. In this case we do not intend to discuss the character of the mediaeval Serbian State, but Prodanović’s conclusion that Dušan’s Serbia was an absolutist monarchy certainly is not correct. For more details about the character of Nemanjić’s State, see Janković, *Istorija*, pp. 77–81.

7 The word translated “charters” is *knjige* (кнѣиге), literally “books”. The expression *knjiga* (book) usually means imperial written order in the Code.

8 Burr, “The Code of Stephan Dušan”, p. 517; Novaković, *Zakonik*, p. 80; *Zakonik cara Stefana Dušana*, vol. III, p. 128.

Article 171, established in 1354, changed the provision of article 105 and provided that the Emperor's order contrary to the law should be immediately abandoned, and that judges should judge according to justice: "A further edict of My Majesty. If the Tsar write a writ, either from anger or from love or by grace for someone and that writ transgress the Code, and be not according to right and the law as written in the Code, the judges shall not obey that writ but shall adjudge according to justice" (Ѹще повелѣва царство ми; аще пише книгѣ царство ми, или по срѣчѣѣ или по любѣви, или по милости за нѣкога, а внази книга разара законникѣ, не по правдѣ и по законѣ како пише законникѣ, соудѣ тоузи книгѣ да не вѣроую, тѣмѣ да соуде и врьше како не по правдѣ).⁹ And article 172 provided that judges should judge by law, but not from fear of the Emperor: "Every judge shall judge according to the Code, justly, as written in the Code, and shall not judge by fear of me, the Tsar" (Въсакѣ соудѣ да соуде по законникѣ право како пише оу законникѣ, а да не соуде по страхѣ царства ми).¹⁰

The provisions of these articles are relevant for the judiciary, but they are, from a constitutional-legal aspect, of great importance because they restrict the prerogatives of the ruler as a supreme organ of power, and put the law above the Emperor, which was undoubtedly at least a constitutional element. How did they come into the Code of Stefan Dušan? Were they the result of an independent development of Serbian mediaeval law, or were they taken from somewhere else?

Although even Valtazar Bogišić was very hesitant as to the independence of these articles of the Code of Stefan Dušan,¹¹ Theodore Zigelj (Фѣдор Зигель) was firmly convinced that they were independent,¹² and Stojan Novaković¹³ and the majority of the researchers of Stefan Dušan's Code agreed with him.¹⁴ It never crossed the minds of Serbian historians to connect articles 171 and 172

9 Burr, "The Code of Stephan Dušan", p. 533; Novaković, *Zakonik*, p. 134; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

10 Burr, "The Code of Stephan Dušan", p. 533; Novaković, *Zakonik*, p. 135; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

11 V. Bogišić, *Pisani zakoni na slovenskom jugu, I. Zakoni izdani najvišom vlašću u samostalnim državama* [Written Laws on Slavonic South, I. Laws Edited by Supreme Legislative Power in Independent States] (Zagreb 1872), p. 55.

12 Zigelj, *Zakonnik Stefana Dušana*, pp. 99, 117. According to Zigelj (p. 33), "The Code expresses better and more clearly those things that already existed in the customs" ("Законникѣ, по видимому болѣе установляѣ то, что уже жило въ обычаяхъ").

13 Novaković, *Zakonik*, p. XLVII.

14 M. Vesnić, "Justinijanovi zakoni i staro srpsko pravo" ["Justinian's Statutes and the Old Serbian Law"], *Branič* 3 (1889), pp. 137–148 and 221–230, making reference to Stojan Bošković, says (p. 230): "We can positively say that Dušan's Code was 'the result of national and hist-

with Byzantine law, because at that time they considered the Eastern Roman Empire as despotic, in which the Emperor's will was always the supreme law:

Mediaeval religious intolerance relying on the ancient schism between the Hellenistic and Roman worlds, left to the new world the legacy of a completely distorted picture of Byzantium as a sleepy, stagnant State in a long process of disgusting decay. It was impossible to think that such a State might have had laws of such great ethical value and great statesmanship, as were the laws in Dušan's Code. As its supreme achievement, articles 171 and 172 were appreciated ... and it was believed that they were the result of the Serbian legislature, or maybe the reflection of Tsar Dušan's own opinion.¹⁵

The second half of the 19th century was a period of violent constitutional struggle in Serbia, and a middle class in a new State proudly emphasized the ethically high norms of the Code of Stefan Dušan as a result of the independent development of Serbian mediaeval law. If foreign influences were ever mentioned, or if a similarity with other mediaeval laws was investigated, then, under the influence of panslavic romanticism, it was done with other Slavonic, primarily Czech and Polish, law.¹⁶

Nikola Radojčić shattered Romantic fallacies and prejudices. Accepting the view of the great British Byzantine scholar John Bagnell Bury about Byzantium as a legal State and about the existence of a Byzantine unwritten but established constitution,¹⁷ Radojčić pointed out in two treatises¹⁸ the great dependence of the Code of Stefan Dušan on Byzantine law, especially on *Basilika*. In another treatise he showed that articles 171 and 172 were taken over directly from Byzantine law.¹⁹ Starting from the *Codex Theodosianus*, and going on to the decrees (*novellae*) of Emperor Andronikos III, Dušan's contemporary, he convincingly showed that in Byzantium law was above the Emperor's

orical development' (S. Bošković), and not at all the supplement or simple translation of Justinian's and other laws of mediaeval Byzantium".

15 Radojčić, "Vizantijsko pravo u Dušanovu Zakoniku", p. 14 (author's translation from the Serbian).

16 A list of works concerning the comparison of Dušan's Law Code with laws of the other Slavonic States is given by Radojčić, "Snaga zakona", p. 104, n. 1.

17 B.J. Bury, *Constitution of the Later Roman Empire* (Cambridge 1910), pp. 7, 9, 29–30.

18 Radojčić, "Vizantijsko pravo u Dušanovu Zakoniku" and "Dušanov Zakonik i vizantijsko pravo".

19 Radojčić, "Snaga zakona", pp. 100–139.

orders. Among decrees of that kind, very prominent were the provisions of *Basilika* VII, 1, 16 and VII, 1, 17, as well as the decree (*novella*) of the Emperor Manuel Comnenos in 1159, which might be considered as a model for articles 171 and 172.²⁰ It cannot be established with certainty from where these articles were taken, but most probably they were taken directly from the *Basilika*. The text of the *Basilika* which corresponds to article 171 of Dušan's Code is VII, 1, 16 and reads: "Πᾶς δὲ δικαστῆς ... τηρεῖτω τοὺς νόμους καὶ κατὰ τούτους φερέτω τὰς ψήφους, καὶ κἂν εἰ συμβαίῃ κέλευσιν ἡμετέραν ἐν μέσῳ κἂν εἰ θεῖον τύπον, κἂν εἰ πραγματικὸς εἴῃ φοιτήσας λέγων τοιῶσδε χρήναι τὴν δίκην τεμεῖν, ἀκολουθεῖτω τῷ νόμῳ. Ἡμεῖς γὰρ ἐκεῖνο βουλόμεθα κρατεῖν, ὅπερ οἱ ἡμέτεροι βούλονται νόμοι". The text which corresponds to article 172 is VII, 1, 17, and reads: "Θεσπίζομεν ... κατὰ τοὺς γενικοὺς ἡμῶν νόμους τὰς δίκας ἐξετάζεσθαι τε καὶ τέμνεσθαι· τὸ γὰρ ἐπὶ τῇ τῶν νόμων κρινόμενον ἐξουσίᾳ οὐκ ἂν δεηθῇ τινὸς ἔξωθεν διατυπώσεως".²¹

Besides articles 171 and 172, which restrict a ruler, and from the constitutional-legal view represent the most interesting provisions in the Law Code of Stefan Dušan, there are many other interesting passages which regulate the foundations of the state and social order, and which would belong to a constitution. The Code insists in many of its provisions that obligations are executed in accordance with the law and that nothing is done against the law (πρὸς ἀκρίβειαν). Such provisions could be classified in three groups: 1) provisions about the judiciary; 2) regulation of the relations between classes of people; and 3) regulation of governmental activities.²²

20 Considering that Radojčić was right, Taranovski (*Istorija*, vol. 1, pp. 229–230) also quoted as a possible source of article 171, besides the *Basilika*, one of the provisions of *Kotor's Statute*, which foresees a case in which a citizen of Kotor received a charter from the King which would exclude the opposite party from the competent legal court who would be sentenced by the ruler to pay a fine to the ruler (*si aliquis ex nostris civibus praesumeret facere aliqua cum dominatione, per que poena aliqua cadat dominationi, cum carta vel sine carta seu povella, quae a dominatione portata fuerit*). That sort of case would be answered with violence and would be punished with a public fine of 500 *perpers*, and the damaged party would get indemnification. It is obvious that the illegal charter had been proclaimed as null and that the court punished illegality (*contra consuetudinem civitatis*). See *Statuta et Leges Civitatis Cathari*, cap. 349 (*De cartis et povellis adductis a dominatione contra consuetudinem civitatis. Anno Domini MCCC primo*), p. 189.

21 *Basilicorum Libri LX, series A, volumen I, textus librorum I–VIII*, ed. Scheltema, Van der Wal, and Holwerda, p. 303. As far as article 105 is concerned, it is also based on the *Basilika*, but on several titles such as II, 6, 6; II, 6, 16; II, 6, 23. For more details about this see Radojčić, "Snaga zakona", p. 136, n. 1.

22 Taranovski, *Istorija*, vol. 1, pp. 224–225.

Article 84 belongs to the first group. It abolishes the old forms of individual judgment and provides that everyone is to be judged according to the law (ТЪКТО ДА СЕ СОУДЪТ ПО ЗАКОНЪ). Article 30 provides that no one is to be persecuted without a trial, and if someone did an injustice to someone, they should appear before a court. Article 182 provides the competence of the judges, that each in his region decides according to law. The absence of a plaintiff before the court discharges the defendant of any responsibility if he spent the time determined by law at the court (article 89). For village boundaries, the law determines the witnesses (article 80). Articles 132, 152 and 154 regulate the jury by law (so-called *sakletvenici*). Law also, according to article 180, determines the payment of fines. And to this group also belong articles 171 and 172, which have a broader significance, as already mentioned.

To the second group, which regulates the relations between classes, belongs article 42, which determines the obligations of the noble landowner (*vlastela baštini*), such as taxes (*soće*) and military service. Articles 31 and 65 provide the parish priest with necessary land (“three fields”—*tri njive*). Article 159 prescribes that the governors of villages should, by law, allow merchants into the village. Articles 142 and 139 protect the dependent inhabitants from the noblemen's despotism and determine the villagers' obligations toward their feudal lords if the lord violates their authority as prescribed by law. Article 139 is connected with article 68, which equalizes the obligations of all villagers (Мероп'хомъ законъ по вѣсн земли). It is forbidden to take from a serf anything that the law forbids (а ино прѣзаконъ, ницо да мѡ се не оузмѡ). It should be mentioned that the rights of the upper classes were guaranteed by special privileges, by chrysobulls and *prostagmas*, which were accorded to the noblemen and to the cities probably before the proclamation of the Code, and which Tsar Stefan Dušan confirmed in articles 39, 40, 124 and 137.

In the administrative area, article 63 should be mentioned, which regulates the income of the *kephales* (lit. “headmen”, the governor of a city). Article 187 regulates some police measures taken when the Emperor and the Empress travel, and article 176 determines the regulation of the towns.

Let us finally go back to the question posed at the beginning of this chapter. Is the Code of Stefan Dušan a constitution from a modern point of view? Although it contains a number of elements usually mentioned in all definitions of a constitution (written document, document with the supreme legal power which regulates the foundations of the social and state order of a State), an interpretation which would accept it as a constitution would undoubtedly be too forced, and we do not wish to engage in arguments of that nature. However, it remains as an evident fact that in Dušan's Law Code there were many elements which today would belong to constitutional law, as much as those in

Magna Carta of 1215. We can even say with certainty that Magna Carta, usually considered as the first mediaeval document with constitutional characteristics, had no provisions of legal validity such as those contained in articles 171 and 172 of Dušan's Law Code.²³

2 The Idea of Rome and Hierarchical World Order

During the Middle Ages, the idea of Rome as the centre of a universal and ecumenical empire, and the whole Christian Church as well, was present in all European nations. Naturally, the Eastern Roman Empire (Byzantium) considered itself as the only successor of the Roman Empire, and according to that ideology, only their monarchs could carry the title "Emperor of the Romans" (βασιλεὺς τῶν Ῥωμαίων). However, the idea of Rome as a universal and eternal empire became attractive to the German and Slavonic rulers. Charlemagne in the West (800) and Simon of Bulgaria in the East (913) started to call themselves emperors. The Byzantines protested, trying to find political and legal arguments that would contest the existence of other "Empires", but finally they had to accept reality. In that way the number of emperors increased, and this meant a decay of the one and only universal Christian Empire, but this multiplication did not lead to negation or oblivion of the centuries-long idea.²⁴

From the time of their settling in the Balkans in the 7th century the Serbs lived in the territory of the Eastern Roman Empire, and they became familiar with Byzantine constitutional ideology expressed as a hierarchical world order. According to this model not all States were equal; rather a strict order existed amongst them, reflecting the importance of each. At the head of this hierarchy was Byzantium, the legitimate holder of the idea of a Universal Empire; only its monarchs could bear the title of Emperor. All other mediaeval States had a rank dependent upon their political importance, which might vary.²⁵

23 See S. Šarkić, "Elements of Constitutionality in Medieval Serbian Law", *Ius commune* 15 (1988), pp. 43–55, and "Norme ustavnopravnog karaktera u srednjovekovnom srpskom pravu" ["Constitutional Norms in Serbian Medieval Law"], in *Dva veka savremene ustavnosti, zbornik radova sa naučnog skupa održanog 17. i 18. septembra 1987* (*Deux siècles du constitutionalisme moderne, recueil des travaux de la colloque scientifique tenue le 17 et le 18 septembre 1987*) (Belgrade 1990), pp. 525–533.

24 See S. Ćirković, "Between Kingdom and Empire: Dušan's State 1346–1355, Reconsidered", in *Byzantium and Serbia in the 14th Century* (Athens 1996), pp. 110–120, especially p. 119.

25 On the hierarchical world order see three studies by G. Ostrogorski: "Die byzantinische Staatenhierarchie", *Seminarium Kondakovianum* 8 (1936), pp. 41–61; "The Byzantine Emperor and the Hierarchical World Order", and "Srbija i vizantijska hijerarhija država" ["Ser-

The heads of these States, pursuing this construct, formed a so-called “family of monarchs”, associated in a fictive parentage. At the head of the family, as *pater familias*, stood the Emperor of Byzantium, whilst different degrees of relationship were conferred on other monarchs depending upon their political importance. Charlemagne, for example, became the Emperor’s “brother” (ἀδελφός) and his German, French and Italian successors were proud of this *adelphos* distinction. English Kings were merely the Emperor’s “friends” (φίλοι), whilst at the bottom of the scale came those insignificant monarchs considered by Byzantium to be part of the household property rather than a part of a family.²⁶

The influence within Serbia of the Byzantine ideology of a hierarchical world order is obvious from the text of a charter presented to the monastery of Hilandar in 1198, by the founder of the Serbian dynasty, Stefan Nemanja. It begins as follows:

In the beginning, God created the heavens and the earth and human beings on it, he blessed them and gave them power over the whole of his creation. And some of them he made emperors, others princes, others lords and provided all of them with herds to be grazed and protected from every harm. So, brothers, the merciful Lord established the Greeks as emperors and the Hungarians as kings and he classed all men and gave the law ... According to all his infinite grace and mercy He endowed our ancestors and our forefathers to rule this Serbian Land ... and appointed me, christened in holy baptism Stefan Nemanja, the Great Župan.

Искони сътвори Богъ Небо и Земляю, и чловѣкъ на ней и благослови ѣ и дасть имъ власть на всѣи твари свои, и постави въи царе, друугие кнезе, ини владикы, и ко мѹжде дасть пасти стадо свое и съблюдати є вѣт всакога зъла находещаго на не. Темъже братие Богъ прѣмилостивы оутверди Грьке царьми а Оугре краальми, и когожде езика раздѣливъ и законъ давъ ... Темъже по мнозѣи его и неизмѣрнѣи милости и чловѣколюбию, дарова нашимъ прадѣдомъ и нашимъ дѣдомъ вбладати сиювъ Землювъ срьбьсковъ ... и постави ме велиега жоупана, нареченаго въ свѣтѣмъ крычени стѣфана Неманю.²⁷

bia and Byzantine Hierarchy of States”], *O knezu Lazaru* (1975), pp. 125–137. Cf. Taranovski, *Istorija*, vol. 1, pp. 119–127, 237–238. On monarchical ideology in Nemanjić’s State see B. Bojović, *L’idéologie monarchique dans les hagio-biographies dynastiques du Moyen Age serbe*, *Orientalia Christiana Analecta* 248 (Rome 1995) and S. Marjanović-Dušanić, *Vladarska ideologija Nemanjića* [Monarchic Ideology of Nemanjić] (Belgrade 1997).

26 F. Dölger, “Die ‘Familie der Könige’ im Mittelalter”, in *Byzanz und die europäische Staatenwelt* (Darmstadt 1964), pp. 43 sq. and 38, n. 8.

27 Ćorović, *Spisi Svetog Save*, p. 1; Mošin, Ćirković, and Sindik, *Zbornik*, p. 68.

So, for Stefan Nemanja, only the Greeks (the Byzantines) could be Emperors, the Hungarians could only be Kings, but by emphasizing the fact that his monarchical power was derived from God and was based on the grace of God, he indicated his independence from the Byzantine Emperor. Consequently by the end of the 12th century Serbia had become an independent State within the Byzantine system of a hierarchical world order.

A year later (1199), Stefan Nemanjić, the son and successor of Nemanja, in a letter to Pope Innocent III,²⁸ equalized the source of power in the national State (grace of God) with the universal and ecumenical power of the Pope. Stefan wrote to the Pope that he is Great Župan by the grace of God, just as Pope Innocent is Pope by the same grace (*Innocentio Dei gratia summo pontifici et universali pape Romane ecclesie ... Stephanus eadem gratia ... magnus iuppanus totius Serbye*).²⁹

The independence of Serbian rulers was pointed out much more after the coronation of Stefan Nemanjić as King in 1217, when the title of *samodržac* (самодржац) was added to the royal title. The Serbian word *samodržac* represents an exact translation of the Greek word αὐτοκράτωρ and Latin term *imperator*.³⁰ The expression *autokrator* (initially a simple translation of the Roman title *imperator*) later achieved great importance in Byzantium because it designated the supreme Emperor, and from the end of the 11th century it became a permanent part of the formula of the Emperor's signature expressed as: (Name of the Emperor) ΕΝ ΧΡΙΣΤΩ ΤΩ ΘΕΩ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΩΡ ΡΩΜΑΙΩΝ Ο (Name of the Dynasty). However, the title of *samodržac* (αὐτοκράτωρ) never achieved the same importance in Serbia. King Stefan Nemanjić did not carry, nor did he even pretend to have, the Imperial crown. Using the title of

28 Latin *Innocentius*, reigned from 1198 to his death 1216. His birth name was *Lotario dei Conti di Segni*.

29 Solovjev, *Odabrani spomenici*, p. 14. Although Nemanja and his son Stefan emphasize their independence, they insist on the fact that Stefan is a son-in-law of the crowned-by-God Kyr (Lord) Alexios, Emperor of the Greeks (Alexios III Angel) and that he carries the high Byzantine title of *sebastokrator*. See Miklosich, *Monumenta serbica*, p. 5, and A. Solovjev, "Hilandarska povelja velikoga župana Stefana (Prvovenčanog) iz god. 1200–1202" ["Charter of the Great Župan Stefan to the Monastery of Hilandar from the Year 1200–1202"], *PKJIF* 5 (1925), p. 9. Cf. B. Ferjančić, "Sevastokratori u Vizantiji" ["Sebastokrators in Byzantium"], *ZRVI* 11 (1968), pp. 141–192, especially pp. 168–171.

30 The authors of Serbian 13th-century hagiographies (Stefan the First-Crowned, Domentian and Theodosios) called Stefan Nemanja and his son Stefan (before coronation) *samodržci* (plural from *samodržac*), but as G. Ostrogorski, "Avtokrator i samodržac", in *Complete works*, Book IV (Belgrade 1969), pp. 321–332, proved, the title was in official use after Stefan's coronation in 1217.

autokrator (*samodržac*), he wanted only to emphasize his complete independence of his foreign and domestic policy.³¹

A step in elevation of the Serbian Kingdom to an Empire was done during the rule of King Milutin. Milutin was very proud of his relationship with the Palaiologoi dynasty. In one of his charters presented to the monastery of Hilandar (1313–1316), he called his father-in-law “My Lord and parent, the Holy Greek Emperor Kyr Andronikos and his beloved son, brother of My Royal Majesty Kyr Michael the Greek Emperor” (оу господина ми и родителя, светаго цара грѣцкаго курь Ан’дроника и оу възлюбленаго сына него, брата кралевства ми, курь Михаила, цара грѣцкаго).³² Later considering himself more powerful than the Byzantine Emperors, Milutin started to call himself in some documents “Emperor of the whole Serbian land” (Царь всѣхъ Србскихъ Земль) and “the true-believing Tsar” (благовѣрни царь).³³ In a charter giving the village of Tmorane to the monastery of Hilandar, we can find a picture of King Milutin in a solemn position and with imperial ornaments, surrounded with the inscription: “Oh Christ the God, the true-believing Tsar Stefan of all Serbian land” (О Христе Боже, правовѣрни царь Стефан всѣхъ Србскихъ Земль).³⁴ According to the Byzantine writer Nikephoros Gregoras, the Empress Irene (Εἰρήνη) gave to her son-in-law (Serbian King Milutin) some objects that had the character of Imperial insignia.³⁵

The triumph of the idea of Rome came in Serbia after Dušan’s proclamation of an Empire, and it was expressed in the charter from about 1346, announcing his legislation:

And appointed me to be lord and ruler of all of my fatherland and I ruled 16 years and then I was strengthened with greater honour by the right hand of the Almighty Lord as the most magnificent Joseph was strengthened with wisdom and appointed to be ruler of many peoples and of all of the Pharaoh’s land and the whole Egypt. In the same manner by His grace I was translated from the Kingdom to the Orthodox Empire. And he gave me in my hands as to the Great Emperor Constantine lands

31 Ostrogorski, “Avtokrator i samodržac”, pp. 302, 337 and 338.

32 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 440, 441.

33 V. Mošin, “Povelja kralja Milutina Karejskoj ćeliji 1318” [“Charter of King Milutin to the Kellion of Kareia 1318”], *Glasnik SND* 19 (1938), p. 71. sq.

34 V. Mošin, “Srpsko carstvo” [“Serbian Empire”], *Hrišćansko delo* 4, jul-avgust, Skopje 1939, p. 11 sq.

35 Nicefori Gregorae, *Byzantina Historia* I–II, ed. L. Schopenus (Bonn 1829–1830); III, ed. I. Bekkerus (Bonn 1855), para. VII, 5, *Bonnae* I, pp. 241–242. On the rule of King Milutin, see Mavrommatis, *La fondation de l’empire serbe*.

and countries and coasts and large towns of the Greek Empire, as we have already said. And I was crowned with the wreath donated by God to the Empire in the year 6854, indiction 14, on the great and most holy feast of the Resurrection by the hand and with the blessing of the Most Holy Patriarch Ioanikie and by all archpriests of the Serbian Council. Also by the hand and with the blessing of the Most Holy Patriarch of Bulgaria Lord Simeon and by all archpriests of the Council of Bulgaria. And with the prayers and blessing of the reverend Council of the Holy Mountain of Athos and by all the elders of the Athonite Council, even by archpriests of the Greek throne and of all the Council, who had decided that I should reign as Emperor. All that happened not according to my desire, neither by some force, but according to the blessing of God and others who appointed me to be Emperor for all Orthodox Faithful in order to glorify the One-in essence-Trinity for ever.

И постави ме господина и сздржителя възсеи зем'ли втѣхъства моего. И царьствова лѣтъ ·SI· и потомъ бол'шею чьстїю вт выш'наго възсех дрьжителя десницею оукрѣпленьныхъ, іакоже бо и прѣвкраснаго Іовсѣфа цѣломѣдрїемъ оукрѣпи и сзтвори его цара многымъ языкомъ и възсемѣ стежанїю фараоновѣ и възсемѣ египтѣ. Тѣмъ же вобразомъ по того милости и мене прѣложи вт кралєв'ства на православ'ное царьство, и възсехъ дастъ ми въз рѣцѣ іакоже и великомѣ кон'стан'тинѣ царѣ, зем'ле и възсехъ страны и поморїа и велике градове царьства грѣческаго, іакоже и прѣжде рѣхомъ, и Богомъ дарованнымъ вѣн'цемъ царьскимъ вѣн'чанъныхъ вт царьство въз лѣто Сѣмѣ мѣсеца априла ·дѣ· днь въз велики и многосѣбѣли и радостны праздники възкресенїа Христова, благословенїемъ рѣкою прѣвсвещен'наго патрїар'ха Іованикїа и възсеми архїереи сзбора срьбскаго. Тогожде благословенїемъ и рѣкою прѣвсвещен'наго патрїар'ха блзгар'скаго курь Сѣмѣвна и в'семи архїереи сзбора блзгарскаго и молитвами же благословенїемъ възсечьст'наго лика Светыѣ Гори Аѣона протомъ же и възсеми игѣмени и всеми старьци сзбора светогорскаго, паче же и вт архїереа прѣстола грѣческаго и възсего сзбора, иже изволише в мене царьствовати. Сѣмъ же в'сѣмъ бив'шимъ не моимъ изволенїемъ ни некою силою, нь по Божїю изволенїю и инихъмъ благословенїемъ поставише цара въз всакѣ православнѣю вѣрѣ, Троицѣ єдино соущ'нѣю славити въз вѣкы аминъ).³⁶

36 Novaković, *Zakonik*, p. 4; *Zakonik cara Stefana Dušana*, vol. III, pp. 428, 430. The charter is only preserved in the Rakovac manuscript, copied c.1700 from an earlier transcript. Malcolm Burr did not include this important text in his translation of Dušan's Law Code. On this charter, see also S. Marjanović-Dušanić, "Elementi carskog programa u Dušanov-

The charter clearly shows the Byzantine constitutional ideology adopted in Serbia: by proclaiming his State an Empire, Dušan achieved his supreme goal. Serbia reached the highest rank in the hierarchical world order, and the whole procedure was done according to the Byzantine model. However, Dušan was conscious that he could not consider himself absolutely equal to the Emperor from Constantinople. In order to emphasize the difference between his status and the status of the ecumenical Emperor in Constantinople, Dušan signs his charters written in Greek by the formula ΣΤΕΦΑΝΟΣ ΕΝ ΧΡΙΣΤΩ ΤΩ ΘΕΩ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΩΡ ΣΕΡΒΙΑΣ ΚΑΙ ΡΩΜΑΝΙΑΣ. As we can see, the expression “Emperor of the Romans” (βασιλεὺς τῶν Ῥωμαίων) was replaced by phrase “Emperor of Serbia and Romania”. Although this difference seems to be insignificant, the fact is that no one Byzantine Emperor ever used the title “Emperor of Romania” (βασιλεὺς Ῥωμανίας). Dušan, although he desired it, could not pretend to be “Emperor of the Romans”, because the legitimate Emperor John v was still alive, holding power in Constantinople, and Dušan did not ever contest his Imperial rights. That is the reason why he replaced, in the charters written in Greek (one of the major world languages of the time), the ethnic elements with geographical ones. That way he limited his power on the part of “Roman territories”, and by a tacit agreement he recognized the Byzantine hierarchical world order in which only one sovereign had a right to the supreme title.³⁷ However, Dušan’s charters written in Serbian were mostly signed as “Stefan, in Christ the God, Tsar of the Serbs and Greeks” (Стефанъ въ Христа Бога царь Сръблемъ и Гръквмъ).³⁸ There are two important observations to make concerning this difference between the signatures in Greek and Serbian charters: 1) Greek charters emphasize the geographical elements

voj povelji uz ‘Zakonik’” [“Elements of the Imperial Programme in Dušan’s Charter by the Code”], *PKJIF* 65–66 (1999–2000), pp. 3–19.

37 See Ij. Maksimović, “Grci i Romanija u srpskoj vladarskoj tituli” [“The Greeks and Romania in the Serbian Sovereign Title”], *ZRVI* 12 (1970), pp. 61–78. The question has been re-examined by D. Korać, “The Newly Discovered Charters of Stefan Dušan for the Monastery of Philotheou”, *ZRVI* 27–28 (1989), pp. 185–216. Cf. N. Oikonomides, “Emperor of the Romans—Emperor of the Romania”, *Byzantium and Serbia in the 14th Century* (Athens 1996), pp. 121–128.

38 The title does not have a permanent form and appears in the different formats. Sometimes we find only “Stefan in Christ the God the true-believing [or only ‘believing’] Tsar” (Стефанъ въ Христа Бога благоверни [or only верни] царь) without any ethnic or geographical elements. In some charters, besides the regular terms (“Tsar of the Serbs and Greeks”), we can find different additions, such as, of the “Occidental Lands” (западни страни), “Maritime Lands” (Поморию), “All Dys” (въсему Дуису), meaning West, from Greek δύσις = West. See M. Dinić, “Srpska vladarska titula za vreme carstva” [“Serbian Sovereign Title during the Epoch of the Empire”], *ZRVI* 5 (1958), pp. 9–19.

("Emperor of Serbia and Romania"), whilst the Serbian documents insist on ethnic ones ("Emperor of Serbs and Greeks"); 2) from Serbian charters the term *samodržac* (αὐτοκράτωρ) disappears, designating political independence; once the State had become an Empire, there was no more necessity of emphasizing its independence.³⁹

3 Duties of the Emperor

Serbian legal documents took several texts from Byzantine legal sources, which were part of Byzantine constitutional ideology. Among others, the translators of Matheas Blastares' *Syntagma* took over details from the *Epanagoge* (Ἐπαναγωγή, "Return to the Point"), or more correctly *Eisagoge* (Εἰσαγωγή τοῦ νόμου, "Introduction to the Law", a Byzantine law book promulgated in 886: begun under Basil I, it was completed under his son and successor Leo VI), a Byzantine (Roman) teaching on the Emperor's duties:

The Tsar is a lawful ruler, the common good of all subjects; he does not do good out of partiality, nor does he punish out of antipathy, but according to the virtues of the subjects, and like a judge at a trial, gives the words equally, and does not give the benefit to any one to the detriment of others. The Tsar's goal is to preserve and foster existing values, and to re-establish with care those lost, and to acquire by wisdom and righteous means and enterprises those which are missing. The task of the Tsar is to do good, for which he is called a benefactor; when he stops doing good, then, according to the opinion of the ancients, it is considered that he has perverted the Tsar's mission. The Tsar must distinguish himself in Orthodoxy and piousness and be renowned in his favour before God.

Царь есть законное представительство, общее благо всем послушникам; ни же по пристрастию благотворе, ни же за соупротивопрестіе муче, нь противь когожде добродѣтели обладаемыхъ, также небы подвигоположники, почести равно подае а не тыштаа благодарѣнія на врьдь доугы-

39 Ostrogorski, "Avtokrator i samodržac", p. 338. On the influence of the idea of Rome on Tsar Dušan, see S. Šarkiċ, "L'idée de Rome dans la pensée et l'action du Tsar Dušan", in *Da Roma alla terza Roma, documenti e studi, rendiconti del x seminario, Campidoglio 21 aprile 1990, Idea giuridica e politica di Roma e personalità storiche*, ed. P. Catalano and P. Siniscalco (Rome 1991), vol. I, pp. 141–164.

имъ нѣкымъ дароуе. Мысль есть царю прѣбывающтихъ же и соуш-
тихъ силъ благостію храненіе и оутвержденіе и погыб'шіихъ въдростнымъ
прилежаніемъ воспринетіе, и не имѣемыхъ прѣмудростію и праведными
нравы и хитрост'ми притежаніе. Кон'ць царю еже благодѣати; тѣмъ же и
благодѣатель глаголетъ се; и когда отъ благодѣаніа изнеможетъ, мнитъ се
погоубывшя по древныхъ царское начертаніе. Нарочитъ въ православныи и
благочестіи дльж'нь есть быти царь, и въ рвеніи божіи прослoutъ.⁴⁰

Such solemn ideas about the Emperor's rule could be found in some of Dušan's charters, written in Greek, as well. The idea of *benefaction* (εὐεργεσία), for example, is present in the first chrysobull to the Iberian (Georgian) monastery of Iviron (Ιβήρον) on Holy Mountain (January 1346), which begins as follows: "Like it is normal to breath, the same way it is normal for the Emperor to do good" ("Ὡσπερ τὸ ἀναπνεῖν οἰκεῖον καὶ κατὰ φύσιν, οὕτω καὶ τὸ εὐεργετεῖν τοῖς βασιλεῦσιν ἐστίν).⁴¹ Dušan's chrysobull to the monastery Xenophontos (Ξενοφώντος) on Holy Mountain from June 1352 expresses the idea of an Emperor imitating God (μίμησις Θεοῦ): "It is necessary to Me the Emperor, if it is possible, to become similar to God, and the most philanthropic to take care of those who are under His power" (Καὶ τῇ βασιλείᾳ μου δεόν κατὰ τὸ δυνατόν ἐξομοιοῦσθαι Θεῷ, [καὶ] φιλανθρώπως ἄγαν τοὺς ὑπὸ χεῖρα αὐτῆς οἰκονομεῖν).⁴²

4 Concordance or "Symphonia" between the Church and State

The regulation of the relations between the Church and the State in Serbia stems from biblical and Byzantine ideas about the origins of authority. According to Christian teaching the source of both the Emperor's and the Church's

40 *Syntagma* B-5, ed. Novaković, pp. 127–128 = *Epanagoge* II, 1–3, 5, ed. J. and P. Zepos, *Ius graecoromanum*, vol. II, pp. 240–241: "Βασιλεὺς ἐστὶν ἔννομος ἐπιστάσια, κοινὸν ἀγαθὸν πᾶσι τοῖς ὑπηκόοις, μήτε κατὰ ἀντιπάθειαν τιμωρῶν, μήτε κατὰ προσπάθειαν ἀγαθοποιῶν, ἀλλ' ἀνάλογός τις ἀγωνοθέτης τὰ βραβεῖα παρεχόμενος. Σκοπὸς τῷ βασιλεῖ τῶν τε ὄντων καὶ ὑπαρχόντων δυνάμεων δι' ἀγαθότητος ἢ φυλακῇ καὶ ἀσφάλεια, καὶ τῶν ἀπολωλότων δι' ἀγρύπνου ἐπιμελείας ἢ ἀνάληψις, καὶ τῶν ἀπόντων διὰ σοφίας καὶ δικαίων τροπαίων καὶ ἐπιτηδεύσεων ἢ ἀνάκτῃσις. Τέλος τῷ βασιλεῖ τὸ εὐεργετεῖν, διὸ καὶ εὐεργέτης λέγεται, καὶ ἡνίκα τῆς εὐεργεσίας ἐξατονήσῃ, δοκεῖ κιβδηλεύειν κατὰ τοὺς παλαιοὺς τὸν βασιλικὸν χαρακτήρα ... Ἐπισημότατος ἐν ὀρθοδοξίᾳ καὶ εὐσεβείᾳ ὀφείλει εἶναι ὁ βασιλεὺς, καὶ ἐν ζήλῳ θεῷ διαβόητος".

41 Solovjev and Mošin, *Diplomata graeca*, p. 38. See H. Hunger, *Prooimion. Elemente der byzantinischen Kaiseridee in der Arengen der Urkunden* (Vienna 1964), p. 141.

42 Solovjev and Mošin, *Diplomata graeca*, p. 186. Cf. Hunger, *Prooimion*, p. 62.

authorities is God. His will has to be obeyed in the serving of people by both, the Emperor and the Patriarch. On these foundations, the system of *symphonia* (συμφωνία) was established and evolved, that is of concord, harmony and mutuality, formulated in the introduction of Emperor Justinian's *Novella vi* in 535. It is from there that John Scholastikos (Ἰωάννης Σχολαστικός) took over teaching about *symphonia* and introduced it into his nomokanonic *Codex* consisting of 87 chapters (6th century), which was subsequently used by Saint Sabba in his work on the Serbian Nomokanon—*Zakonopravilo*. Thanks to this the Serbs had a literal translation of the text dealing with the theory of *symphonia* between the State and Church as early as 1219.⁴³

The text of Justinian's *Novella vi* begins as follows:

The greatest gifts of God among men, bestowed by philanthropy from above, are clergy and empire (ἱερωσύνη καὶ βασιλεία, sacerdotium et imperium, *свещенство же и царство*). First, to serve to what is divine, and second, to govern and take care of what is human. Both, coming from the same principle, adorn the human life, because nothing can be so important to the Emperors as the honour of the clergy, who always pray to God, even to themselves. If the first ones are irreproachable in every matter and if they would have courage in front of God, and the second ones start decorating the cities and those who are under them, regularly and fittingly, it will become a pleasant concordance (συμφωνία, consonantia, *сгласиѣ*) which gives everything good to human life. And it will happen, we believe, if the supervising of ecclesiastical rules (τῶν ἱερῶν κανονῶν, *sacrarum regularum, свещеныхъ правихъ*) would be kept, which the Apostles—righteously praised and glorified as the eye-witnesses of the Word of God (θεοῦ λόγου, *dei verbi, божію слову*)—have conferred, and the Saint Fathers have kept and told.⁴⁴

As we can see, the essence of this theory consists in the idea that both institutions equally respect Divine Law. Such a solution makes it theoretically

43 See M. Petrović, "Saglasje ili 'Simfonija' između crkve i države u Srbiji za vreme kneza Lazara" ["Concordance or 'Symphonia' between the Church and the State in Serbia at the Time of Prince Lazar"], in *O Zakonopravilu ili Nomokanonu Svetoga Save, rasprave* [On the Zakonopravilo or Nomocanon by Saint Sava, Treaties] (Belgrade 1990), pp. 73–98. On "symphonia" in Byzantium, see M. Petrović, *Ὁ Νομοκάνων εἰς 14 τῆτος καὶ οἱ βυζαντινοὶ σχολιασταί* (Athens 1970), p. 54 sq.

44 Iust. Nov. vi, praefatio, ed. R. Schoell and G. Kroll, pp. 35–36; Petrović, *Zakonopravilo ili Nomokanon Svetoga Save*, pp. 213a–b.

impossible to establish supremacy of one over the other, that is, it excludes the possibility of the appearance of *caesaropapism* or *papocaesarism*.

This teaching about *symphonia* was completely acceptable to the Orthodox Serbia of the Middle Ages. It was confirmed by the legal solutions of Dušan's Law Code, as well as in the charters of Serbian rulers before him and heads of the Church. The Church and the State help each other in that the representatives of the spiritual and secular authorities do not transgress their own limits; they do not interfere in each other's spheres but, on the contrary, support one another in their common interest, which brings the people both material and spiritual progress.

However, when the *Syntagma* of Matheas Blastares was translated in Serbia, the Serbs found out that the interpretations of the distinguished canonists Theodore Balsamon and Demetrios Chomatianos (Δημήτριος Χωματηνός or Χοματηνός) were not in harmony with a teaching about *symphonia* from Justinian's *Novella vi*. Under their influence, Matheas Blastares omitted the following chapter from the *Epanagoge*: "The Emperor is presumed to enforce and maintain, first and foremost all that is set out in the divine scriptures; then the doctrines laid down by the seven Ecumenical Councils; and further, and in addition, the received Romaic laws" (Ὑπόκειται ἐκδικεῖν καὶ διατηρεῖν ὁ βασιλεὺς πρῶτον μὲν πάντα τὰ ἐν τῇ θείᾳ γραφῇ γεγραμμένα, ἔπειτα δὲ καὶ τὰ παρὰ τῶν ἑπτὰ ἀγίων συνόδων δογματισθέντα, ἔτι δὲ καὶ τοὺς ἐγκεκριμένους ῥωμαϊκοὺς νόμους).⁴⁵ That fact made the possibility for the Emperor to interfere in some ecclesiastical matters, such as the election of bishops, changing of the Patriarch, determination of Church district's rank, etc.⁴⁶

5 Concept of the State

Serbian sources clearly show that at the end of the 12th century, the idea of the State was well-established. Legal documents call the Serbian State ДРЖАВА (*država*, State), but more often СРБСКА ЗЕМЛА (*Srpska Zemlja*, Serbian Land) and sometimes ОТАЧСТВО (*otačastvo*, *patria*, fatherland). However, *Serbian Land* exists independently of monarch and dynasty and is not a hereditary estate. Although Stefan Nemanja has pointed out that the ruler's monarchical power comes from God, he and his successors were conscious that Serbia is not their estate and that the Serbian Land, by the same grace of God could

45 *Epanagoge* II, 4, ed. Zepos, *Ius graecoromanum*, vol. II, p. 240.

46 Troicki, "Crkveno-politička ideologija", pp. 187–189.

be governed by someone else. Such a concept came into Serbia under Byzantine influence, because in Byzantium Emperors and dynasties changed, but the Empire always remained.⁴⁷

Several examples taken from the legal documents can illustrate very well these conclusions. In the charter presented to the monastery of Hilandar (1198), the founder of the Serbian dynasty, Stefan Nemanja, says: "According to all his infinite grace and philanthropy He [God] endowed our ancestors and our forefathers to rule this Serbian Land ... and appointed me, christened in holy baptism Stefan Nemanja, the Great Župan" (ТѢМЪЖЕ ПО МНОГОУБИ ЕГО И НЕИЗЪМѢРНЫМИ МИЛОСТИ И ЧЛОВѢКОЛЮБИЮ, ДАРОВА НАШИМЪ ПРАДѢДОМЪ И НАШИМЪ ДѢДОМЪ УБЛАДАТИ СЮЮВЪ ЗЕМЛЮВЪ СРЪБЬСКОВЪ... И ПОСТАВИ МЕ ВЕЛИЕГА ЖОУПАНА, НАРЕЧЕНАГО ВЪ СВѢТѢМЪ КРЪЩЕНИ СТЕФѦНА НЕМАНОУ).⁴⁸ However, his son and successor, Stefan the First Crowned, in a charter issued between 1217 and 1227, giving the island of Mljet (today in Croatia) to the monastery of Saint Mary (on the same island), says: "Or if someone will be the lord after me, either my child, or someone who is close to me, or somebody else" (ИЛИ КТО И БОУДЕ ВЛАДЫКА ПО МНѢ, ИЛИ МОЕ ДѢТЕ ИЛИ ПРИСНИ МОИ, ИЛИ ИНЫ КТО).⁴⁹ Stefan's son, King Vladislav, in a charter presented to the monastery of Saint Nicholas on the island Vranjina (1 September 1241–31 August 1242), says a little bit differently that: "Everything that was in favour of this temple has not to be abused by Me, the sinful King Vladislav, neither by my brother, nor by my son, nor by my grandson, nor by my Royal relative, nor by someone whom God chooses to be the sovereign" (ДА НЕ ПОТВОРИТЕ СЕГО ОУТВѢРЖДЕНАГО СЕМОУ ХРАМОУ МНОЮ ГРѢШНИМЪ КРАЛЕМЪ ВЛАДИСЛАВОМЪ НИ БРАТЬ МОИ, НИ СИНЬ МОИ, НИ ОУНОУКЪ МОИ, НИ СОУРОДНИКЪ КРАЛЕВѢСТВА МИ, ИЛИ КОГО ИЗВОЛИ БОГЪ БЫТИ ГОСПОДѢСТВУЮЩА).⁵⁰ In the charter presented to the monastery of Hilandar (1276–1281), either by King Dragutin or King Milutin,⁵¹

47 Cf. B. Nedeljković, "O saborima i zakonodavnoj delatnosti u Srbiji" ["On Councils and Legislative Activity in Serbia"], in *Zakonik cara Stefana Dušana 1, Struški i Atonski rukopis* (Belgrade 1975), pp. 31–32.

48 Mošin, Ćirković, and Sindik, *Zbornik*, p. 68.

49 Ibid., p. 109.

50 Ibid., p. 163.

51 Novaković, *Zakonski spomenici*, p. 387; Stojanović, *Stari srpski hrisovulji, akti, biografije, letopisi, tipici, pomenici, zapisi i dr.*, p. 12; L. Petit and B. Korablev, *Actes de Chilandar, Vizantijsii vremennik 19* (1915), Priloženie 1, *Actes slaves*, 6, 1, p. 70; V. Mošin and L. Slaveva, *Spomenici na srednevekovnata i ponovata istorija na Makedonija*, vol. 1, pp. 274–275; and Mošin, Ćirković, and Sindik, *Zbornik*, p. 268, attributed this charter to King Dragutin. On the contrary, M. Živojinović, "Da li je sačuvana povelja kralja Dragutina Hilandaru?" ["Is the Charter of King Dragutin to the Monastery of Hilandar Preserved?"], *ZRVI* 32 (1993), pp. 129–136, expressed the opinion that the charter was issued around 1299 by King Milutin.

it was said: “And whoever it pleases God to be the lord of the Serbian Land, either the son of Me the King, or grandson, or grand-grandson, or from others” (аще кога Богъ изволи быти господина Сръбскои Земли или сына кралевства мы, или вьнуоука, или правьнуоука, или вѣт прочихъ).⁵² Confirming the gift of *protosebastos* Hrelja to the monastery of Hilandar (6 May 1328), King Stefan Dečanski says: “And after the death of Me the King, whoever God wishes to rule, either the son of Me the King, or My Royal relative, or anyone else to whom God gives [power]” (Обаче и по смърти кралевства ми ѿкоже Богъ изволи господствоујуца, или сынъ кралевства ми, или соудникъ кралевства ми, или кто любу юмоу же дастъ Богъ).⁵³ Tsar Dušan, in the charter giving privileges to the monastery of Hilandar (17 May 1355), says very briefly: “Whoever God likes to be the lord in the fatherland of Me the Tsar, either the son or the relative of Me the Tsar, or by God’s judgment from other parentage” (ѿкоже изволи Богъ господствовати въ земли отчѣства царства ми, или сынъ или соудникъ царства ми, или Божиимъ соудомъ одъ инога рода).⁵⁴

52 Mošin, Ćirković, and Sindik, *Zbornik*, p. 269.

53 Novaković, *Zakonski spomenici*, p. 401, para. XIV.

54 A. Solovjev, “Dva priloga proučavanju Dušanove države” [“Two Contributions to the Study of Dušan’s State”], *Glasnik SND* 2.1–2 (1927), p. 29.

Organization of Power

The Serbian mediaeval State was a monarchy with the sovereign holding supreme power. However, so-called State Councils (*Državni sabori*), a representative body consisting of the most powerful lords, worldly and ecclesiastical, had great influence over monarch. The sources mention a great number of court dignitaries too, and some local civil servants. The Serbian Orthodox Church also had great power and influence.

1 Monarch

1.1 Titles

On the titles of the first monarchs who ruled over Serbia from the time of the settlement of the Serbs in the Balkans, we know nothing, although in modern Serbian history textbooks the word *knez*¹ has been used. Scarce information is given by Byzantine writers, using the title taken from Greek antiquity—*archon* (ἄρχων). For example, in the story of Constantine VII Porphyrogennetos (*De administrando imperio*, Chapter 29) on Serbs (Σέρβλοι), Croats (Χρωβάτοι), Zachlumites (Ζαχλοῦμοι), Terbouniotes (Τερβουνιώται), Kanalites (Καναλίται), Diokletians (Διοκλητιανοί) and “Arentani who are also called Pagani” (καὶ Ἀρεντανοί, οἱ καὶ Παγανοὶ προσαγορευόμενοι), he wrote: “Princes, as they say, these nations had non, but only ‘zupans’, elders, as is the rule in the other Slavonic regions” (“Ἀρχοντας δέ, ὥς φασι, ταῦτα τὰ ἔθνη μὴ ἔχειν, πλὴν ζουπάνους γέροντας, καθὼς καὶ αἱ λοιπαὶ Σκλαβηνίαι ἔχουσι τύπον).² In Chapter 32, speaking on the settlement of the Serbs, the Emperor-historian says: “When, therefore, that same Serbian prince died who had claimed the Emperor’s [Herakleios] protection, his son ruled in succession, and thereafter his grandson, and in like manner the succeeding princes from his family” (αὐτοῦ οὖν τοῦ ἀρχοντος τοῦ Σέρβλου, τοῦ εἰς τὸν βασιλέα προσφυγόντος, τελευτήσαντος, κατὰ διαδοχὴν ἦρξεν ὁ υἱὸς αὐτοῦ, καὶ πάλιν ὁ ἑγγων, καὶ οὕτως ἐκ τῆς γενεᾶς αὐτοῦ οἱ καθεξῆς ἀρχοντες).³

1 The Slavonic word *knez* is of German origin (from *kuningaz*, *kuniggs* or *König*). See Skok, *Etimologijski rječnik*, vol. II, pp. 108–109.

2 Constantine Pophyrogenitus, *De administrando imperio*, pp. 124–125.

3 Ibid., pp. 154–155. Constantine Porphyrogennetos uses the same title, *archon*, for the rulers of Bulgaria (p. 154).

Anna Comnena, describing the battles of the Serbian ruler Bolkan (Vukan) and her father Emperor Alexius, wrote: "This Bolkan was ruler of all Dalmatia [i.e. Serbia], a fine orator and a man of action" (Ὁ γὰρ Βολκάνος ἀνὴρ δὲ οὗτος τὸ πᾶν τῆς ἀρχῆς τῶν Δαλματῶν φέρων, δεινὸς μὲν εἰπεῖν, δεινὸς δὲ καταπράξασθαι),⁴ but she did not mention his title. A few lines further, when she describes the subordination of Bolkan to the Emperor, she says: "Soon Bolkan presented himself confidently before the Emperor, accompanied by his kinsmen and the leading župans. The hostages (his own nephews Uresis [Uroš] and Stephen Bolkan, with others to the total of 20) were promptly handed over" (Ἐκεῖνος δ'εὐθὺς τεθαρρηκὼς προσεληλύθει συνεπαγόμενος τοὺς τε συγγενεῖς καὶ ἐκκρίτους τῶν ζουπάνων καὶ προθύμως ὁμήρους τοὺς αὐτοῦ ἀνεψιαδεῖς τῷ αὐτοκράτορι παραδédωκε, τόν τε Οὖρεσιν καλούμενον καὶ Στέφανον τὸν Βολκάνον καὶ ἑτέρους τὸν εἴκοσιν ἀριθμὸν ἀποπληροῦντας).⁵ Twelfth-century sources, speaking of Uroš and Stephen Bolkan (Stefan Vukan), use the title of *Archizupan* (ἀρχίζουπάνος), i.e. Great Župan.

That "Great Župan" was the title of Serbian monarchs from 12th century is confirmed indirectly by Byzantine writer John Kinnamos (Ἰωάννης Κίνναμος), when he says that Bosnia is not subordinated to the *Archizupan* of Serbia (ἔστι δὲ ἡ Βόσθνα οὐ τῷ Σερβίων ἀρχίζουπάνῳ καὶ αὐτῇ εἵκουσα).⁶

Stefan Nemanja, the founder of the Serbian dynasty, carried the title of Great Župan (вѣли or вѣлики жѣпань in Serbian documents; μέγας ζουπάνος or ἀρχίζουπάνος in Greek texts; *megaiupanos*, *magnus iupanus* in Latin texts; and *magnus comes* in Hungarian documents).⁷ This title appears for the first time in a peace-treaty with Dubrovnik (27 September 1186), where at the end of the Latin text we find the signature in Serbian: "I, the Great Župan, swore and signed" (Аџь вѣли жѣпань клънь се и подъписахъ).⁸ At the end of the charter

4 *Alexiad* IX, 4, 1. Greek text according to the edition by B. Leib and A. Comnène, *Alexiade* (Paris 1967), vol. II, p. 166. English translation by E.R.A. Sewter, *The Alexiad of Anna Comnena* (Harmondsworth, Baltimore MA, Victoria Australia 1969), p. 276.

5 *Alexiad* IX, 10, 1, Sewter, pp. 289–290; Leib, vol. II, p. 184.

6 *Ioannis Cinnami epitome rerum ab Ioanne et Alexio Comnenis gestarum*, rec. A. Meineke (Bonn 1836), p. 103.

7 Župan was a ruler of "župa", the Old Slavonic name for counties. According to the story of the priest from Diokleia (*Letopis popa Dukljanina*, ed. Mošin, pp. 27, 31, 34, 36, 38, 46), the first Župan was a certain Tihomilj, who got this title from the Serbian Prince Časlav (tenth century), for his merits in war against Hungarians. It seems that the title originates from the clan system, but later on it became the court's title. During the reign of the Kings in Diokleia the Great Župans were regents of eastern Serbia, but in the 12th century they became most powerful from Dioklein Kings (see Chapter 1).

8 Mošin, Ćirković, and Sindik, *Zbornik*, p. 48.

presented to the monastery of Hilandar, the seal has the Greek text Σφραγίς Στεφάνου μεγάλου ζουπάνου τοῦ Νεμάνια ("the seal of Stefan Nemanja, the Great Župan").⁹ The same title was carried until 1217 by his son Stefan Nemanjić, as can be seen in a letter written to Pope Innocent III from 1199 (*Stephanus ... magnus iuppanus totius Servye*)¹⁰ and in a the treaty with Dubrovnik (1214–1217), preserved in both a Serbian and Latin version (Serbian text: АЗЪ ВЪЛИ ЖЪПАНЪ СТЕФАНЪ; Latin text: *Ego magnus iupanus Stephanus*).¹¹ However, the treaty with Dubrovnik from 1205 was signed by the same ruler simply as ГОСПОДИНЪ СТЕФАНЪ (*Gospodin Stefan*, Lord Stefan).¹²

In 1217, Nemanja's son Stefan got the royal crown from the Pope Honorius the Third, what he expressed in the Žiča chrysobull (1220) and in the charter presented to the monastery of Saint Mary on the island of Mljet (1217–1227). The charter to Saint Mary was signed as "Stefan, by the grace of God crowned King and Autocrat of all Serbian and Maritime Land" (СТЕФАНЪ ПО МИЛОСТИ БОЖИЕИ ВЪНЪУАНЪНЫ КРАЛЬ И САМОДРЪЖЦЪ ВСЪЕ СРЪПСКЕ ЗЕМЛЫ И ПОМОРСКИЕ).¹³ However, in the Žiča chrysobull Stefan emphasized the fact that he was, by the grace of God, the first crowned King of all Serbian Land (СРЕФАНЪ, ПО БОЖИЕИ МИЛОСТИ ВЪНЪУАНИ ПРЪВИ КРАЛЬ ВСЕ СРЪБСКІЕ ЗЕМЛЕ).¹⁴ After the King's death, the formula "First Crowned King" (*Prvovenčani kralj*) was recognized by his sons and successors Kings Radoslav, Vladislav and Uroš, and later on it became common. For example, King Radoslav, in a treaty with Dubrovnik (4 February 1234), calls himself "the son of the First Crowned King ... Stefan" (СЫНЬ ПРЪВОВЪНЪУАНЪНАГО КРАЛА ... СТЕФАНА).¹⁵ Confirming privileges to the monastery of Hilandar (22 August 1234–1237) King Vladislav says: "I Stefan Vladislav, with the help of God the King, grandson of Saint Simon, son of the First Crowned King Stefan" (ІА СТЕФАНЪ ВЛАДИСЛАВЪ, СЪ ПОМОЩІЮ БОЖИЕЮ КРАЛЬ, ВНОУКЪ СВЕТАГО СИМЕОНА, СЫНЬ ПРЪВОВЪНЪУАНЪНАГО КРАЛА СТЕФАНА).¹⁶ King Uroš the First, restoring the chrysobull of his father in favour of the monastery

9 Ćorović, *Spisi Svetog Save*, p. 4.

10 Solovjev, *Odabrani spomenici*, p. 14.

11 Mošin, Ćirković, and Sindik, *Zbornik*, p. 86.

12 Novaković, *Zakonski spomenici*, p. 136. It is possible that the charter was promulgated by the ex-King Stefan Dragutin 1313–1316 or 1314. See Mošin, Ćirković, and Sindik, *Zbornik*, pp. 453–454.

13 Mošin, Ćirković, and Sindik, *Zbornik*, p. 109.

14 Ibid., p. 91.

15 The Serbian text of King Stefan Radoslav's treaty with Dubrovnik has the Greek signature Στέφανος ῥήξ ὁ δούκας (ῥήξ = rex), although the King calls himself in the document КРАЛЬ (*kral* = king). Mošin, Ćirković, and Sindik, *Zbornik*, p. 130.

16 Mošin, Ćirković, and Sindik, *Zbornik*, p. 148.

of Saint Peter and Paul on the River Lim (1254–1263), says: “Stefan Uroš, son of the Saint Lord King Stefan, the First Crowned” (Стефанъ Оурошъ, сынъ свѣтаго господина краља Стефана Прѣвѣианъуанънаго краља).¹⁷

The title of “King” was carried by Serbian monarchs until 1346, when Stefan Dušan took the title of “Emperor” (“Tsar”). Though the Serbian Empire did not last very long, it happened that after Dušan’s death two sovereigns carried the title of Tsar: Dušan’s son and legitimate successor Uroš (since 1355) and Dušan’s half-brother Simon-Siniša, lord of Thessaly and Epiros (since 1356).¹⁸ After Uroš’s death (1371) the title of Tsar disappeared from Serbian territory but it survived for two more years (about 1371–1373) in the Byzantine part of the Empire. It seems that the title was carried by Simon’s son John Uroš, who devoted himself very soon to the monastic life, became the monk Ioasaph and one of the founders (κτίτωρ, кѣтиторь, *ktitor*) of the famous monastery of the Great Meteoron (Μεγάλο Μετέωρον, from Greek μετέωρος, “floating in the air”).¹⁹

After 1371 the title of Serbian monarchs was Knez (kneзь, Prince) or Veliki Knez (the Great Prince), carried by Prince Lazar (until 1389) and his son Stefan Lazarević (until 1402).²⁰ However, as Lazar was pretender on Nemanjić’s herit-

17 Ibid., p. 227.

18 Simon’s mother was Byzantine Princess Mary (Maria) Palaiologos, second wife of Serbian King Stefan Dečanski. After Dušan’s death Simon proclaimed himself in 1356 Tsar and ruled separately in Thessaly and Epiros without recognizing the imperial rights of his cousin Uroš. He signed his charters, written in Greek as ΣΥΜΕΩΝ ΕΝ ΧΡΙΣΤΩ ΤΩ ΘΕΩ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΩΡ ΡΩΜΑΙΩΝ ΚΑΙ ΣΕΡΒΕΙΑΣ Ο ΠΑΛΑΙΟΛΟΓΟΣ, or ῬΩΜΑΙΩΝ ΚΑΙ ΣΕΡΒΩΝ, Ο ΠΑΛΑΙΟΛΟΓΟΣ, or ῬΩΜΑΙΩΝ ΚΑΙ ΣΕΡΒΩΝ ΚΑΙ ΠΑΝΤΟΣ ΑΛΒΑΝΟΥ ΟΥΡΕΣΙΣ Ο ΠΑΛΑΙΟΛΟΓΟΣ. As can be seen, he called himself sometimes “Tsar of Romans and Serbia”, sometimes as “Tsar of Romans and Serbs”, and once “Tsar of Romans and Serbs and whole Albania”, but he always added the dynastic name of his mother—Palaiologos (Solovjev and Mošin, *Diplomata graeca*, pp. 228, 238, 256).

19 The *Meteora* is a rock formation in central Greece, hosting one of the largest and most precipitously built complexes of Eastern Orthodox monasteries. The monastery of Great Meteoron is the largest of the monasteries located at *Meteora*, and the main church (*katholikon*, καθολικόν) is consecrated in honour of the Transfiguration of Jesus (Μεταμόρφωσης τοῦ Σωτήρος).

20 See for example the charter presented to the monastery of Hilandar (1380) or the treaty with Dubrovnik of 1387 (Mladenović, *Povelje kneza Lazara*, pp. 131, 193). The title of Great Prince (Μέγας Κνεζ) could be found in the chancery manual of the Constantinopolitan Patriarchate from 1386. See J. Darouzes, “Ekthesis néa, Manuel des pittakia du xive siècle”, *REB* 27 (1969), p. 60. Cf. I. Đurić, “*Ekthesis nea*—vizantijski priručnik za ‘Pitakia’ o srpskom patrijarhu i nekim feudalcima krajem xiv veka” [*Ekthesis nea*—Byzantine Manuel for ‘Pitakia’ on Serbian Patriarch and Some Feudal Lords at the End of the 14th Century], *ZFFB* 12.1 (1974), pp. 421–422.

age²¹ he added to his title the formula *САМОДРЪЖВНИ ГОСПОДИНЬ* (“independent Lord”) and took the dynastic name Stefan, as well (*СТЕФАН КНЕЗ ЛАЗАРЬ*).²² In August 1402 Lazar’s son Stefan got the title of “Despot” from Byzantine co-Emperor John VII Palaiologos, and that title was used till the fall of the Serbian mediaeval State (1459). Usually Stefan Lazarević signed his charters “by the grace of God Despot Stefan Lord of all Serbian Lands” (*МИЛОСТИЮ БОЖИЕЮ ГОСПОДИНЬ ВСѢМЬ СРЪБЛІЕМЬ ДЕСПОТЬ СТЕФАНЬ*).²³ From 1459 to 1537, the Hungarian Kings gave the title of “Despot” to the most prominent Serbian noblemen living in Hungary and fighting against the Turks as the King’s vassals.²⁴

Besides the monarch’s title, the territory that he ruled over was always designated. Territorial formulae had a partly permanent, partly variable content.²⁵ For example, King Stefan the First Crowned signed the treaty with Dubrovnik (c.1220) simply as “Stefan Serbian King” (*СТЕФАНЬ КРАЛЬ СРЪПСКИ*).²⁶ However, in the charter giving some villages to the monastery of Holy Virgin on the island of Mljet (1217–1227), we can find the signature “Stefan by the Grace of God Crowned King and Autocrat of all Serbian and Maritime Land” (*СТЕФАНЬ ПО МИЛОСТИ БОЖИЕИ ВѢНЪУАНЬНЫ КРАЛЬ И САМОДРЪ-*

21 His consort Militza (Милица) Nemanjić was the daughter of Prince Vratko Nemanjić (known in Serbian epic poetry as Jug Bogdan), who as a great-grandson of Vukan Nemanjić was part of a minor branch of the Nemanjić dynasty.

22 Mladenović, *Povelje kneza Lazara*, pp. 131, 148–149, 180–181, 192, 203–204. See F. Barišić, “Vladarski čin kneza Lazara” [“Sovereign Title of Prince Lazar”]; V. Mošin, “Samodržavni Stefan knez Lazar i tradicija nemanjićkog suvereniteta od Marice do Kosova” [“Independent Prince Stefan Lazar and the Tradition of Nemanjić’s Sovereignty from Maritza to Kosovo”]; B. Ferjančić, “Vladarska ideologija u srpskoj diplomaciji posle propasti Carstva 1371” [“Sovereign Ideology in Serbian Diplomacy after the Fall of Empire 1371”]. These three works were all published in the collection attributed to Prince Lazar (*O knezu Lazaru*) (Belgrade 1975). Cf. R. Mihaljčić, *Lazar Hrebeljanović, istorija, kult, predanje* [Lazar Hrebeljanović, History, Cult, Tradition] (Belgrade 2001). On the dynastic name Stefan (Stephen) see Marjanović-Dušanić, *Vladarska ideologija Nemanjića*, pp. 42–59.

23 For example, two charters (1 September 1414–31 August 1415 and 20 January 1427) presented to the Great Lavra of Saint Athanasios on Holy Mountain (Mladenović, *Povelje i pisma despota Stefana*, pp. 254, 261). In the foreign documents he was called *dominus despotus Slavoniae*, *dominus despotus dux (Rassie-Raxie)*, *dominus despotus (regni) Rascie*. See B. Ferjančić, “O despotskim poveljama” (“On Despots’ Charters”), *ZRVI* 4 (1956), pp. 89–114.

24 See Ferjančić, *Despoti u Vizantiji i južnoslovenskim zemljama*, pp. 89–114.

25 See Đ. Bubalo, “Teritorijana komponenta kraljevske titule Nemanjića” [“The Territorial Component of the Nemanjić Royal Title”], in *Kraljevstvo i Arhiepiskopija u srpskim i pomorskim zemljama Nemanjića* [The Kingdom and the Archbishopric of the Serbian and Maritime Lands of the Nemanjić Dynasty] (Belgrade 2019), pp. 245–290.

26 Novaković, *Zakonski spomenici*, p. 137; Mošin, Ćirković, and Sindik, *Zbornik*, p. 272.

ЖЬЦЬ ВСТѢ СРЬПСКЕ ЗЕМЛЫ И ПОМОРСКІЕ).²⁷ In some documents, issued by the Kings Radoslav and Vladislav, the old name of the State was revived—Raška (РАШКА, *Rascia* or *Raxia* in Latin documents), derived from the name of the town of Ras (today near Novi Pazar, town on the south of Serbia), the oldest Serbian capital. For example, at the beginning of the treaty with Dubrovnik (4 February 1234), King Radoslav calls himself “King of all Rascian Lands” (кРАЛЬ вСТѢХ РАШКИХЪ ЗЕМЪЛЬ).²⁸ The same formula was used by Radoslav’s brother, King Vladislav, in two treaties with Dubrovnik (September 1234–April 1235) and the charter presented to the monastery of Hilandar (1234–22 August 1237).²⁹ In Serbian legal sources the name of Raška disappeared very soon, but it survived in Papal, Hungarian, Venetian and Ragusan correspondence: they call even Tsar Dušan *rex Rassie* (*Raxie*).³⁰

As Raška was genetically linked with Diokleia, later Zeta (modern Montenegro), that connection was pointed out in the monarch’s title. Already Stefan Nemanja in his charter presented to the monastery of Hilandar (1198) says that he restored his grandfather’s land (И ВЪНОВИХЪ СВОЮ ДѢДИНУЮ) and that he conquered “of Maritime Lands Zeta” (ѡД МОРЬСКЕ ЗЕМЛЕ ЗЕТУЮ).³¹ From that

27 Mošin, Ćirković, and Sindik, *Zbornik*, p. 109.

28 Ibid., p. 130.

29 Ibid., pp. 134, 138, 148.

30 For example in one of the Papal letters, speaking of Tsar Dušan, we can read: ... *qui se cesarem seu regem Rassie facit communiter nominari*. S. Ljubić, *Listine o odnošajih između Južnoga Slovenstva i Mletačke republike 111* [Charters Concerning the Relationship between South Slavs and the Republic of Venice 111] (Zagreb 1868–1870), p. 186. Very rarely in some documents written in Latin, we can find the term *Arascia*, instead of *Rascia*. For example in Tsar Dušan’s charter presented to the Republic of Dubrovnik (20 August 1346), asking them to pay 200 perpers to the church of Saint Nicholas in the Italian city of Bari, it was said that the same devotion was expressed by the Tsar’s grandfather, Lord Uroš [Stefan Uroš 11 Milutin] and his father, lord Stefan [Stefan Uroš 111 Dečanski], most illustrious ex-Kings of *Arascia* (*Specialis illa devotio, quam erga confessorem mirificum et egregium beatissimum Nicolaum felicis recordationis dominus Vrossius, dominus avus noster, et bone memorie dominus Stephanus, dominus genitor noster, illustrissimi reges condam Arascie, habuerunt et quam nos multomagis habemus*). Ed. S. Ćirković, “Povelja cara Dušana Opštini Dubrovačkoj o isplati 200 perpera godišnje crkvi Svetog Nikole u Bariju”, *SSA* 4 (2005), pp. 88–89. Beside this charter, the name *Arascia* was mentioned in a document, permitting the alienation of some objects from the treasury of the Basilica of Saint Nicholas (1353). The text says that three candelabums had images of Saint Nicholas, King of *Arascia* and of his seal (*in quibus xmalis sunt ymagines, S. Nicolai, Regis Arasce et arma dicti Regis*). Ed. F. Nitti de Vito, *Le pergamene di S. Nicola di Bari, periodo Angioino (1343–1381)*, *Codice Barese vol. xviii* (Trani 1950), p. 66. Cf. S. Novaković, *Istorija, tradicija, izabrani radovi* [History, Tradition, Selected Works], edited by S. Ćirković (Belgrade 1982), p. 464, n. 31.

31 Ćorović, *Spisi Svetog Save*, p. 1; Mošin, Ćirković, and Sindik, *Zbornik*, p. 68.

time all Nemanja's successors include *Pomorje* (Поморје) or *Pomorske Zemlje* (Поморска Земља)—“Maritime Lands”—in their royal or imperial titles.³²

Since 1343 King Dušan introduced in his title “Greek Lands”, meaning the territories conquered from Byzantium, emphasizing in that way his imperial pretensions. “Greek Lands” were mentioned in four charters written in Old Serbian:

- 1) A charter confirming the chrysobull of his father Stefan Dečanski to the monastery of Dečani, presented between May 1343 and December 1345,³³ was signed “King of all Serbian and Maritime Lands and of Greek and Bulgarian regions” (краль всѣхъ срьбскихъ и Поморскихъ Земль и прѣдѣль Грьчскихъ и Българскихъ).³⁴
- 2) A charter to the monastery of Saint Peter and Paul on the River Lim (25 October 1343) used the title “Independent Lord of all Serbian Lands and Maritime and Greek” (самодръжав'ни господинь всехъ срьбскихъ земль и Поморскихъ и Грьч'кихъ).³⁵
- 3) A charter to the monastery of Hilandar with the confirmation of the domain of the church of Saint Nicholas in Vranja (1343–1345) has the title “King of all Serbian and Maritime Lands and of a part of the Greek Lands” (краль всехъ срьп'скихъ и поморскихъ земьль и чѣст'ники Грькомь).³⁶
- 4) A charter to the *pyrgos* (tower) of Hilandar in Chroussia from 1 January 1345 used the title “King Autocrator of all Serbian Lands and of a part of the Greek sides” (краль, самодръжыць всѣхъ српскихъ зем'аль и чѣст'ники Грьчскимъ странамаь).³⁷

In the documents written in Latin, the Byzantine Lands (*Romania*) were mentioned for the first time in the charter issued to the Republic of Venice (15 October 1345), where King Dušan calls himself *Bulgarie imperii partis non modice particeps et fere totius Romanie dominus*.³⁸ The territorial formula of “Serbia

32 Novaković, *Zakonski spomenici*, pp. 147, 150, 154, 156, 393, 396, 399, 404, 406, 568, 587, etc.

33 See M. Blagojević, “Kada je kralj Dušan potvrdio Dečansku hrisovulju” [“When King Dušan Confirmed the Dečani Chrysobull”], *IČ* 16–17 (1970), p. 86.

34 Edited by Milojević, *Dečanske hrisovulje*, p. 137, and Ivić and Grković, *Dečanske hrisovulje*, p. 278.

35 Edited by Ž. Vujošević, *SSA* 3 (2004), p. 48.

36 Edited by S. Marjanović-Dušanić, *SSA* 4 (2005), p. 70.

37 Edited by D. Živojinović, *SSA* 6 (2007), pp. 85–86. In the last two charters Dušan used the expression *čestnik*, derived from the name *čest* (чѣсть) = part. So, *čestnik* is someone who possesses a part of something (see Daničić, *Rječnik iz književnih starina srpskih*, vol. III, p. 463). The formula *čestnik Grkom* or *čestnik grčkim stranam* means that Dušan rules over a part of the Greek (Byzantine) territories.

38 Ljubić, *Listine o odnošajih između Južnoga Slovenstva i Mletačke republike* II, pp. 192–193.

and Romania" was adopted for the first time in King Dušan's charter in favour of the monastery of Saint John the Baptist (πρόδρομος = forerunner, precursor) on the mountain Menoikeion (τοῦ Μενουκίεως), located east of Serres (October 1345). It was signed: Στέφανος ἐν Χριστῷ τῷ Θεῷ πιστὸς κράλης καὶ αὐτοκράτωρ Σερβίας καὶ Ῥωμανίας.³⁹ Later on, after proclamation of the Empire, that became the permanent formula of Dušan's signature on Greek charters, only the title King (κράλης) was replaced by Emperor (βασιλεὺς). In charters written in Serbian, Dušan is mostly "Tsar of Serbs and Greeks" (Царь Срблємь и Грькомь), although in a few cases some other lands were included.

The territorial formula of the monarch's title in mediaeval Serbia had some variable ingredients as well, which sometimes appeared and sometimes disappeared. King Vladislav, for example, mentions in his title beside Rascian (Serbian) Lands, Dioklitia (Диоклитиа, Diokleia, modern Montenegro), Dalmatia (Дальмация), Trevunie (Трѡвѣнїе, region of the city of Trebinje, today in Herzegovina) and Zahumlje (Захльмїе, Ζαχλοῦμοι, *Zachlunia*, a region on the Adriatic coast between Dubrovnik and the Neretva River).⁴⁰ Trevunie could be found in the title of his brother King Radoslav (Стефанъ въ Христа Бога вѣрны краль вѣхъ Рашкихъ Земль и Тревоуниискиихъ),⁴¹ while Zamumlje, or Hum, was mentioned in King Uroš's charter to the church of Holy Virgin in Ston (c.1252). The King's title has the formula "King and with God Autocrat of all Serbian Lands and Maritime and Hlm" (краль и с' Богомь самодръжыць в'се Српъскыє Земле и Поморъскыиє и Хльмъскииє), while the signature is "Stefan Uroš, by the Grace of God, King of Serbian Land and Maritime and Zahumlje" (Стефанъ оурошь по милости божиєи краль српскихъ Земль и поморъскихъ и захльмїе).⁴²

Several documents issued by Emperor Dušan mention "Occidental Sides" (Западниє Страни)⁴³ or "all Dys" (в'сѣмь Дисѡ, Greek δύσης = west).⁴⁴ Albania (Албаниа) was mentioned in Emperor Dušan's charter, giving the church of Saint Nicholas to Jacob (Ἰάκωβος, James), Metropolitan (μητροπολίτης) of Serres

39 Solovjev and Mošin, *Diplomata graeca*, p. 16.

40 Mošin, Ćirković, and Sindik, *Zbornik*, p. 138.

41 Ibid., p. 130 (Treaty with Dubrovnik of 4 February 1234).

42 Mošin, Ćirković, and Sindik, *Zbornik*, p. 198.

43 Charter presented to the monastery of Hilandar regarding the village of Potoľino (January–April 1348), edited by Ź. Vujošević, *SSA* 5 (2006), p. 119; first charter to the Russian monastery of Saint Panteleimon on Holy Mountain (12 June 1349), edited by S. Božanić, *SSA* 15 (2016), p. 60.

44 For example two charters to the Kellion of Saint Sabba from Jerusalem in Karea (1348), edited by D. Źivojinović, *SSA* 7 (2008), pp. 62 and 74.

(1 September 1352–31 August 1353)⁴⁵ and some documents of his half-brother Simon (Siniša).⁴⁶ Bulgaria was included in Dušan's royal title between May 1343 and December 1345 when he confirmed the Dečani chrysobull of his father Stefan Dečanski (see above). In the charter in favour of the monastery of Saint Archangels in Jerusalem (8 March 1350), Dušan calls himself "Tsar of Serbs, Greeks, Bulgarians, of Despotate and Maritime Lands" (царь Стефанъ сръбляемъ и Гръкомъ и Българомъ и Дѣспотатѡу и Поморію).⁴⁷

In the famous Gračanitza charter King Milutin adds to his title "Danubian Lands" (кралъ... и Подоунавъскихъ Земляхъ),⁴⁸ in Greek documents called Πάραδουνάβις or Παρίστριον. The "Danubian Lands" were mentioned later in Prince Lazar's charter in favour of Hilandar's hospital issued between 1 September 1379 and 31 August 1380 (Азь въ Христа Бога благовернійи и самодръжавнійи господинъ сръбляемъ и Подоунавию Стефанъ кнезь лазаръ)⁴⁹ and in the treaty of his son Despot Stefan with Dubrovnik from 2 December 1404 (МИЛОСТІЪ БОЖИ ГОСПОДИНЪ ВЪСЦИ ЗЕМЛИ СРЪБСКОИ И ПОМОРІЎ И ПОДУНАВЪСКИМЪ СТРАНАМЪ ДЕСПЦПЪ СТЕФАНЪ).⁵⁰ After the battle of Velbužd (Βελεβούδιον, ancient *Pataulia*, modern Küstendil⁵¹ in southern Bulgaria) and the defeat of the Bulgarian army (28 July 1330), King Stefan Dečanski added to his title the territories of Ovče Pole (Εὐτζάπολις, called *Neustapolis* by George Akropolites, a district in North Macedonia in the basin of the Upper Vardar) and Velbužd (кралъ всеи сръпъскои земли и Поморъскои и ѿвчепольскои и Велъбоуждъскои).⁵²

Exceptionally, King Milutin took the title *rex Croatiae*, when Mladen, *Ban* (governor) of Croatia, included in his title the territory of Hum (*Mladen Croa-*

45 Edited by G. Bojković, *SSA* 15 (2016), p. 92.

46 For example, the second chrysobull to the monastery of Saint George in Zablaneia was signed as "Simon in Christ God believing Emperor and Autocrat of Romans and Serbs and all Albania, Uroš Palaiologos" (ΣΥΜΕΩΝ ΕΝ ΧΡΙΣΤΩ ΤΩ ΘΕΩ ΠΙΣΤΟΣ ΒΑΣΙΛΕΥΣ ΚΑΙ ΑΥΤΟΚΡΑΤΟΡ ΡΩΜΑΙΟΝ ΚΑΙ ΣΕΡΒΩΝ ΚΑΙ ΠΑΝΤΟΣ ΑΛΒΑΝΟΥ, ΟΥΡΕΞΙΣ Ο ΠΑΛΑΙΟΛΟΓΟΣ). Solovjev and Mošin, *Diplomata graeca*, p. 256.

47 Solovjev, *Odabrani spomenici*, p. 149. *Despotate* designates the territories that before belonged to the Despots of Epiros. See Dinić, "Srpska vradarska titula", p. 14.

48 Solovjev, *Odabrani spomenici*, p. 105.

49 Mladenović, *Povelje kneza Lazara*, p. 131.

50 Mladenović, *Povelje i pisma despota Stefana*, p. 44.

51 Bulgarian Cyrillic Кюстендил.

52 Edited by S. Mišić, "Povelja kralja Stefana Uroša III Dečanskog manastiru Svetog Nikole Mračkog u Orehovu" ["Charter of King Stefan Uroš III to the Monastery of Saint Nicolas Mrački in Orechovo"], from 9 September 1330, *SSA* 1 (2002), p. 59. The village of Orechovo (Bulgarian Cyrillic Орехово), in the area of Mraka, is situated in the very heart of the Rhodops mountains (south-central Bulgaria), 60 km southwest of Plovdiv.

torum et Bosne banus, generalisque dominus tocius territorii Chelmensis).⁵³ In Dušan's titles Bosnia (Bosna, Босна) was mentioned only once, in a collection of transcripts of Ragusan Cyrillic charters, done by Ragusan copyist Nikša Zvijezdić. As the charter was not conserved as the original text, it seems that the copyist Zvijezdić interpolated the word Bosna (Босна).⁵⁴

1.2 Functions

As holder of supreme power, the monarch in mediaeval Serbia had numerous functions. The most important were the following.

1.2.1 Legislation

Mediaeval lawyers regarded legislation exclusively as an attribute of Empire. The Emperor himself was the only person who could promulgate legal acts that were called "laws" (νόμοι, *leges, zakoni, закони*); for other legal provisions, by which a national State created law, other terms were used. For example, in France, down to 1789, the legal acts of French Kings were termed *ordonnances*. The terms *leges* and *lois* were used for the provisions of Roman law only, with the exception of those precedents, customs and traditions which formed the basic laws of the Kingdom (*leges fundamentales regni, lois fondamentales du Royaume*). We may observe a similar phenomenon in the Slavonic States within the sphere of influence of Byzantium. In Russia, for example, the legal acts of monarchs (Princes, later Tsars) were called laws (*законы*) only from the beginning of the 18th century. The legal enactments of Russian Princes were called "constitutions" (*ustavi, уставы*), whilst the enactments of the Moscovite Princes were called "edicts" (*ukazi, указы*). The term "laws" (*законы*) was used only for the legal acts of the Byzantine Emperors, called *gradskie zakony blagochestivych carej grecheskich* (градские законы благочестивыхъ царей греческихъ) in Russian legal sources. The words *gradskie zakony* are a translation of the Greek νόμοι πολιτικοί, or the Latin *leges civiles*. In the title of a Byzantine compilation of laws of the 9th century, in use in Bulgaria, we find for the first time the word *zakon* (ЗАКОНЪ) in a Slavonic text. This is the document well known under the title *Zakon sudnyj ljudem* (Законъ Судный Людямъ, *Court Law for the People*), which has its origin, no doubt, in the *Ecloga* (Ἐκλογή τῶν νόμων, lit. "Selection of the Laws"), a Byzantine legal collection of 726 or 741. There can be little doubt that *Zakon sudnyj ljudem* was called "law", because

53 Jireček, *Istorija Srba*, vol. II, p. 14 and n. 86.

54 See Dinić, "Srpska vladarska titula", p. 16. Cf. S. Šarkić, "Vladarske titule u srednjovekovnoj Srbiji" ["Monarch's Titles in Mediaeval Serbia"], *ZRPFNS* 46.2 (2012), pp. 23–35.

it contains provisions of Byzantine law, proper, imperial laws. The Bulgarian Princes did not consider themselves authorised to promulgate laws.⁵⁵

Down to the 14th century, Serbian monarchs promulgated only charters—particular legal rules, regulating the conditions within one particular manor (*vlastelinstvo*, *властелинство*), the legal position of different categories of inhabitants, or one particular problem. The promulgation of general legal acts, regulating conditions within the whole national territory, was not regarded as an attribute of the monarch, unlike in other mediaeval States. The people created those rules, by the long-term repetition of some customs. The main function of a monarch, besides commanding the army and executing administrative power, was to protect customary law.

Like other mediaeval monarchs, the Nemanjićs considered themselves as the protectors of customary law. On such a case we have a testimony in book VIII, chapter 58 of the *Ragusan Statute*, entitled *De pena vrasde* (29 September 1308). The text of the *Statute* says that among Ragusans (Dubrovčani) and Serbs existed an old custom (*antiqua consuetudo*) of *vražda* (вѣжда)—payment of 500 *perpers* for murder committed between Ragusans and Serbs. However, when a Ragusan nobleman Marko Lukarević had killed a man who was the subject of the Serbian King, the Ragusan Doge (Venetian *Bellectus Fallerius*, Doge from 1305–1307) wanted to sentence him to death, referring to statutes of former Doges.⁵⁶ Ragusan noblemen, on contrary, insisted on the application of the old custom of *vražda*, and this caused discordance between the Doge and the noblemen. As Dubrovnik was at that time under the supreme power of the Republic of Venice, the dispute was presented to the Venetian Doge, who confirmed the decision of the Ragusan Doge. However, the Ragusans made a great effort in order to maintain good relationships with the Serbian King (Milutin), so they sent a solemn delegation to Venice with the request to keep the old custom of *vražda*. In Venice, Ragusan ambassadors were instructed to demand the Serbian King to introduce such a way of punishment “that would be pleasant to God, men and whole world” (*que Deo et hominibus et toti mundo amabilis est*), meaning that punishing the killer by death. But, if King Milutin rejects the application of *talio* (punishment in the same kind), let the old custom of *vražda* for quarrels between Ragusans and Serbs remain. With such instructions the Republic of Dubrovnik (Ragusa) sent solemn ambassad-

55 See T. Taranovski, *Enciklopedija prava* [Encyclopedia of Law] (Belgrade 1923), pp. 439–440, and “Pravo države na zakonodavstvo” [“The Right of the State on Legislation”], in *Šišićev zbornik* (Zagreb 1929), pp. 370–378.

56 Liber sextus, I. De homicidiis B (Statutes of 1237–1238): *Quicunque fecerit homicidium, nisi se defendendo, quod plene possit probari, moriatur* (Statut grada Dubrovnika, p. 324).

ors to the Serbian King who put forward a proposal. After having listened to the ambassadors, King Milutin answered that there was no way he would agree to that, because he did not want to spill the blood of his subjects. The only thing he wanted to respect and maintain was the old custom of *vražda*, the custom of his ancestors and his own, on which he was bound by the oath (*quibus auditus dictus dominus rex respondit quod in hoc nullo modo assentiret et quod nolebat spargere sanguinem suorum, sed volebat servare et tenere antiquam consuetudinem vrasde predecessorum suorum et suam ... qui hoc eciam firmaverat per sacramentum*). Ragusans, of course, could treat their subjects as they wished, but he [King Milutin] would apply only the old custom of *vražda*.⁵⁷

This attitude towards legislation changed in 1346, when King Dušan proclaimed himself “the true-believing Tsar and Autocrat of the Serbs and Greeks”. Educated as a young man in Constantinople, Dušan knew very well that if his State pretended to become an Empire, it should have, *inter alia*, its own independent legislation. Accordingly he began preparations for his own Law Code immediately after the establishment of the Empire, following the examples of his models, the great Byzantine Emperors and legislators Justinian I, Basil I and Leo VI. In a charter of 1346 in which he announced his legislative programme, he said that the Emperor’s task was to “make the laws that one should have” (ЗАКОНИ ПОСТАВИТИ ЈАКОЖЕ ПОДОБАЉЕТИ ИМЕТИ).⁵⁸ These laws were, no doubt, laws of the type the Byzantine Emperors had, namely general legislation for the entire State’s territory. However, from the Byzantine point of view, Dušan’s codification was a usurpation: the Serbian monarch took on himself legislation—a competence that did not belong to him as it was the exclusive attribute of Roman (Byzantine) Emperors. Such an idea can be found in the charter of Despot John Uglješa (1386), regarding the reconciliation between the Constantinopolitan and Serbian Patriarchates. The charter condemns Dušan’s proclamation as Tsar and the fact that he [Dušan] “made his will the main law, not only for human things, but for divine as well” (καὶ νόμον κύριον μὴ ὅτι γε τῶν ἀνθρωπίνων, ἀλλὰ καὶ τῶν θείων πραγμάτων τὸ ἐαυτοῦ τιθεὶς θέλημα).⁵⁹

1.2.2 Command of the Army

To command the army was a very important duty of the monarch, but as article 129 of the Code says, he could be replaced by *vojvoda* (ВОЕВОДА = duke, commander): “In every army the commanders have authority even as the Tsar

57 Edition Bogišić and Jireček, pp. 201–202; *Statut grada Dubrovnika*, pp. 466–468.

58 Novaković, *Zakonik*, p. 5; *Zakonik cara Stefana Dušana*, vol. III, p. 430.

59 Solovjev and Mošin, *Diplomata graeca*, p. 264.

himself. What they say, let it be obeyed. If any man disobey them in aught, he shall be tried even as though he had disobeyed the Tsar” (На вѣсѣхъ на вѣсѣхъ да вѣладаю воеводѣ, колико и царь; цю рекѣ да се чюю; ако ли ихъ кто прѣчюю оу чюю. Да кѣсть този вѣсѣхъ кою и вѣнемъ зѣи кою бы цара прѣслоушати).⁶⁰

1.2.3 Judgment

One of King Dragutin's charters, giving privileges to the monastery of Hilandar, says that monastery people can dispute their lawsuits in front of the King or one of King's courtiers obtained by a superior's (*hegoumenos*) demand (И люде сие светѣе цркви, прѣ кою имаю мегоу совомъ ѿ да и кѣсть прѣдъ кралемъ или прѣдъ кѣдинѣмъ вѣдъ вѣладальцѣ двора кралева, кою испроси игоумьнѣ и братѣмъ).⁶¹ This means that a monarch in mediaeval Serbia, before the promulgation of Dušan's Law Code, could judge even in the first instance, but that he could also designate one of his courtiers to replace him. Dušan's Law Code determines precisely the cases when the Tsar acts as a judge. First, it is provided in article 78 for disputes over the Church's land which had become complicated: “let the appeal be to my majesty” (да оупросѣ царство мѣи). Article 105 says: “Imperial charters which are produced before the judges in any matter, which my Code contradicts, and which the court find invalid shall be brought and submitted to me” (Книгѣ царевѣ кою приносѣ прѣдъ соудѣ за цю юбо, терѣ ихъ потвори законѣ царства мѣи, цю сѣмъ записалъ кою любо книгоу; вѣнезѣи книзе кою потвори соудѣ, терѣи книзе да оузмоу соудѣ и да ихъ принесѣ прѣдъ царство мѣи). However, according to article 171 (from the second part of the Code), if some imperial writ transgress the Code “the judges shall not obey that writ but shall adjudge according to justice” (соудѣ тоузи книгѣ да не вѣроуѣ, тѣкѣмо да соудѣ и вѣрше како кѣ по правдѣ). This means that the written Code was made paramount, overriding any special edicts or writs issued by the Tsar occasionally. Finally, article 181 provides: “If there be a big case and they cannot decide it and come to a decision, however great the court may be, let one of the judges come with both the parties before me, the Tsar” (Ацѣ се вѣрѣте велико дѣло, а не оузмо-

60 Burr, “The Code of Stephan Dušan”, p. 522; Novaković, *Zakonik*, p. 98; *Zakonik cara Stefana Dušana*, vol. III, p. 134. According to the testimony of Byzantine writer and Emperor John Cantacuzenos, the allied Serbian troops, fighting with him against the legitimate Emperor John V (summer 1342), were under the command of 20 Serbian great lords (Μετά δὲ τοὺς ὀρκούς ὁ Κράλης [Stefan Dušan] τῶν ἐν τέλει τοὺς δυνατῶτάτους αὐτοῦ συναγαγὼν τέσσαρας δυνάμεις πρὸς τοὺς εἰκόσι, τέσσαρας μὲν αὐτοῖς κατείχε, τοὺς δὲ εἰκόσι παραδίδου βασιλεῖ ἅμα τοῖς ὑπὲρ ἐκείνους στρατιαῖς, ὡς πάντα προθύμως, ἅπερ ἂν καλεῖται βασιλεὺς, ποισόντας). Bonnae II, p. 276. Cf. *VIIINJ* vol. VI, p. 406, n. 147 (comment by B. Ferjančić).

61 Mošin, Ćirković, and Sindik, *Zbornik*, p. 268.

гноу расѣдити и расправити кон любо соудъ великъ боудѣтъ; да грѣде wt соудѣи єдинѣ съ вѣѣма внѣмазѣи пѣр'цема, прѣд царство ми).⁶² So, the Tsar tried only very important and complicated cases.

1.2.4 Representation of the State in International Relationships

Another function of a monarch was to represent the State in international affairs and to conclude treaties with foreign countries. However, the influence of noblemen, especially the great lords, on foreign policy was very important.⁶³ Even the powerful Tsar Dušan, when concluding in 1349 a treaty with Dubrovnik, said: “My Imperial Majesty agreed with the son of my Imperial Majesty, King Uroš, and my noblemen” (и зговори се царство ми синомъ царства ми кралѣмъ Ѹрѡшѣмъ, и с властѣли).⁶⁴

1.3 Revenues

The most important foundation of a monarch's power was his economic might. Like in other mediaeval States, Serbian monarchs had supreme property rights over the whole territory of the State (*dominium eminens*). As the owner of the State territory, the monarch had the right to alienate it: he could give lands as a gift to the Church and noblemen, or sell some parts of the territory. For example, King Dušan sold the peninsula of Pelješac (today in Croatia) to the Republic of Dubrovnik (22 January 1333) for an annual revenue of 500 Venetian perpers, paid on Easter (А вѣѣина дѡбрѡвачка да ми даѣ на всако годице на великъ дань⁶⁵ ѣ. сатѣ перперѣ вѣтѡчницѣхъ).⁶⁶ The supreme property right brought to the monarch various incomes, which were his exclusive rights, so-called *iura regalia*: rights on mineral wealth, customs, mintage, etc. Besides that, the monarch was in possession of numerous manors that were his hereditary estate.

The spreading of the territory and growing of the economy in mediaeval Serbia at the end of the 13th century increased the monarch's revenues and the wealth of the court. According to the testimony of Byzantine ambassadors, the enrichment of Serbian monarchs seems to have happened very fast. When George Pachymeres (Γεώργιος Παχυμέρης) visited Serbia (1267–1269) in order to

62 Burr, “The Code of Stephan Dušan”, pp. 213, 517, 533, 534; Novaković, *Zakonik*, pp. 62, 80, 134, 140; *Zakonik cara Stefana Dušana*, vol. 111, pp. 120, 128, 148, 152.

63 See Chapter 10, section 4.

64 Edited by D. Ječmenica, *SSA II* (2012), p. 38.

65 ВѢЛИКЪ ДАНЬ, lit. “Great Day”, i.e. Easter.

66 D. Ječmenica, “Prva stonska povelja kralja Stefana Dušana” [“The First Ston Charter of King Dušan”], *SSA 9* (2010), p. 32.

negotiate the marriage of Princess Anna (Emperor Michael's VIII daughter) and Prince Milutin (future King), he found there a very primitive and modest way of life "like they were living from hunting and stealing" (ὡς ἀποζῆν θήραις καὶ κλέπτοντας). According to his story, King Uroš was very surprised by the splendid escort of a Byzantine Princess. He showed to the Byzantines a young woman, who was wearing worn and ragged clothes, saying: "That's the way we treat our brides".⁶⁷ However, when Theodore Metochites (Θεόδωρος Μετοχίτης) came to King Milutin's court (1299) he saw a completely different scene: the King was dressed splendidly, over-decorated with precious stones, pearls and especially gold. The whole palace (ὁ δόμος) was shining from silk fabric embroidered in gold, and the whole ceremony was, as much as possible, an imitation of "Roman [Byzantine] gentility" (ῥωμαϊκῆς εὐγενείας).⁶⁸

The most important sources for the Serbian monarch's revenues are the following.

1.3.1 Income from Mines

Serbian rulers rented out the mines to Ragusans (Dubrovčani), Kotorans or Saxons (*Sasi*, Саси), under the condition that they got a rental fee or tenth part from revenues. It was the most important and the most certain source of the monarch's income.

1.3.2 Income from Mintage

Mintage started in Serbia in the middle of the 13th century, but monarchs rented out mintage as well. Such a practice brought many abuses that caused a decline of monetary value. For this reason, some foreign countries, especially the Republic of Venice, took vigorous measures against the Serbian currency.⁶⁹

67 Georges Pachymères, *Relations historiques*, ed. A. Failler (Paris 1984), II, p. 453, line 6. For the bride, Pachymeres used the word νύμφη, which has several meanings: bride, fiancée, daughter-in-law, sister-in-law or young woman in general, the last of which is how the French editor translated it (*jeune femme*). "The bride" was probably King Uroš's daughter-in-law, Hungarian Princess Katherine (Katalin), daughter of King Stephen (István) v, wife of his first son, future King Dragutin. See *VIIINJ* vol. VI, pp. 26–27, nn. 54 and 54a (comment by Lj. Maksimović).

68 Mavrommatis, *La fondation de l'empire serbe*, pp. 103–104; *VIIINJ* vol. VI, p. 112, n. 66 (comment by I. Đurić).

69 The great Italian poet Dante Alighieri wrote in his *Divine Comedy, Paradise* XIX, 141 (*Divina Commedia, Paradiso*, XIX, 141) the following verses: "as also Rascia's prince, who in an ill hour saw Venetia's coin" (*E quel di Rascia che male a visto il conio di Vinegia*). English translation by Courtney Langdon (Cambridge MA 1921). *Rascia*, *Rassa* or *Raxia*, Serbian *Raška*, was the old name for Serbia, used for a long time in Occidental mediaeval countries. So, *quel di Rascia* could be Serbian King Stefan Uroš Milutin (1282–1321), Dante's contempor-

Trying to control the mintage, Tsar Dušan ordered in his Code (article 168): “Goldsmiths may not be in the counties and the land of my Empire, but in the market-towns, where I have ordered dinars to be minted” (Златара оу жѣпах и оу земли царства ми, нигдѣ да нѣсть, развѣ оу тръговѣх гдѣ ѣсть поста-вило царство ми, динаре ковати). The other order was in article 170: “Let the goldsmiths be in the towns of my Empire to strike money and for other purposes” (Оу градовѣх царства ми да стоѣ златарѣ, и да ковѣ и инѣ потрѣбе). Article 169 foresees the case when someone turns a deaf ear to the above-mentioned orders: “And if there be found a goldsmith outside the towns and market-towns of my Empire in any village, that village shall be scattered and the goldsmith branded: and if there be a goldsmith in a town who coins dinars secretly, he shall be branded and the town shall pay such a fine as the Tsar says” (Аще ли се вѣрѣте златарѣ вѣвѣнь градовѣ и тръговѣ царства ми оу коемъ селѣ, да се този село распе, и златарѣ иждене. Ако се вѣрѣте златарѣ оу градоу ковѣ динаре танино, да се златарѣ иждене и градъ да плати глобоу цю рече царѣ).⁷⁰ It seems that the Tsar’s strict orders were not respected for long. The sources testify that during the reign of Tsar Uroš (Dušan’s son), powerful lords, such as Despot Oliver and Nicholas Altomanović, minted their own money. In the charter presented by Tsar Uroš to *čelnik* (prefect) Musa (15 July 1363), one goldsmith’s vilage was mentioned (село златарѣско Лѣсково),⁷¹ which leads us to the conclusion that money was not minted only in towns designated by the Code.

Article VII of the Law of Mines orders that anyone who mints counterfeit money shall be punished by the cutting off of a thumb and a fine of 50 perpers (Законъ є и за динарѣ цю се ковоу оу цекѣ, тко га палачи или TRABOSIJA да моу се палцѣ втѣче и да платѣ глобе, њ. перпер).⁷²

ary, who by diminishing the value of Serbian money provoked the “monetary scandal” in Bologna in 1305. See V. Ivanišević, *Novčarstvo srednjovekovne Srbije* [Money Trading in Mediaeval Serbia] (Belgrade 2001), pp. 39–41. Cf. S. Šarkiċ, “Stefan Uroš Milutin—*Sveti kralj* ili stanovnik Danteovog Pakla” [“Stefan Uroš Milutin—*The Sainted King* or Dweller of Dante’s Hell”], *ZRPENS* 37.1–2 (2003), pp. 59–70.

70 Burr, “The Code of Stephan Dušan”, p. 532; Novaković, *Zakonik*, pp. 133, 134; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

71 Edited by M. Šuica, *SSA* 2 (2003), p. 144.

72 Ed. Radojčić, *Zakon o rudnicima*, p. 52; ed. Marković, *Zakon o rudnicima*, p. 21. For mintage of counterfeit money the Law of Mines uses two verbs: *palačiti* (палачити) and *trabosijati* (трабосијати). The origin of the word *palačiti* is not clear. It may come from the Greek παλάσσω = to dirty, to pollute, to spoil. *Trabosijati* is Latin *trabocare* and French *trebucher*, *trebuchier*. Cf. Liber Statutorum civitatis Ragusii, Lib. VIII, cap. LXXXIV (*Statut grada Dubrovnika*, p. 494), entitled *Supra moneta falsa (De grossis contrafactis): Et quicumque trabocaverit de dicta moneta usque* See also Radojčić, *Zakon o rudnicima*, pp. 80 and 84.

1.3.3 Income from Customs

Customs⁷³ were rented to Ragusans too. Custom's fees (duties) were not paid at the borders, but in the market-places where the merchandise was sold.

1.3.4 "Saint Demetrios' Revenue" ("Svetodmitarski dohodak")

This was the income paid by the Ragusans on Saint Demetrios' (Δημήτριος) Day (26 October) for the trade privileges that they had in Serbia. It was mentioned for the first time in King Vladislav's treaty with Dubrovnik (September 1234–April 1235), and it was fixed at 1000 perpers and 50 ells of scarlet cloth (ДА ТИ ДАМО ТИСЪКЮ ПЕРЬПЕРЬ И ПЕТЬДЕСЕТЬ ЛАКЪТЬ СКРЬЛАТА ЧИСТОГА И УРЬЛЕНОГА),⁷⁴ given in two annual instalments (the second at Christmas). The income increased in 1252 to 1200 perpers, and in 1268 it was fixed at 2000 perpers. That amount is confirmed by King Dragutin in his treaty with Dubrovnik from 1281 (и сизѣи двѣ тисѣки да даю на ДМИТРОВЪ ДЪНЬ).⁷⁵

1.3.5 "Ston Revenue" ("Stonski dohodak", *Tributum Stagni*)

This was the income paid by the Ragusans from 22 January 1333, when King Dušan sold them the peninsula of Ston (today Pelješac in Croatia) for an annual income of 500 Venetian perpers. The amount had to be paid every year at Easter. However, in 1350 Tsar Dušan gave the so-called "Ston Revenue" to the Serbian monastery of Saint Archangels in Jerusalem.⁷⁶

73 The Serbian word for customs is *tsarina* (carina, ЦАРИНА), originating from the word Tsar (ЦАРЬ). On the history of customs, see K.M. Ivanović, *Prilozi za istoriju carina u srednjovekovnim srpskim državama* [Contributions for the History of Customs in Mediaeval Serbian States], Spomenik SANU XCVII (Belgrade 1948).

74 Mošin, Ćirković, and Sindik, *Zbornik*, p. 135. Scarlet cloth was used in the state robes of the court and noblemen. The Serbs evidently first heard of it from Italy, as they called it *scrlat*, derived from an Italian word, that in turn was probably derived from Persian *sagalat*. It was originally the name of a heavy cloth, introduced to Europe by the Venetians. Cf. article 119 of the Code: "Merchants who trade in scarlet cloth of better or inferior quality shall travel freely without hindrance in my dominion and sell and buy and trade however commerce may require" (Burr, "The Code of Stephan Dušan", p. 520). An ell was called in Serbia *lakat* (lit. elbow) or *stopa* (lit. foot), and its quantity cannot be surely defined. It seems that it was between 29.4 and 30.4 cm. See S. Ćirković, "Merenje i mere u srednjovekovnoj Srbiji" ["Measuring and Measures in Mediaeval Serbia"], in *Rabotnici, vojnici, duhovnici* [Workers, Soldiers, Clergymen] (Belgrade 1997), pp. 139–144.

75 Mošin, Ćirković, and Sindik, *Zbornik*, p. 266. On the Ragusan's tributes see M. Dinić, "Dubrovački tributi—Mogoriš, Svetodmitarski i Konavoski dohodak, Provižun braće Vlatkovića" ["Ragusan's Tributes—Mogoriš, Saint Demetrios' Revenue, Revenue of Konavli, Provisions of Brothers Vlatković"], *Glas SKA* 158 (1935), pp. 203–257.

76 Solovjev, *Odabrani spomenici*, pp. 149–150. Cf. M. Živojinović, "Svetogorci i Stonski dohodak" ["The Hagiorites and the Tribute of Ston"], *ZRVI* 22 (1983), pp. 165–206.

1.3.6 Land Tax—"Soće"

This was collected from every home and could be paid in money (one perper) or be replaced by one *kabao* of corn (see above, Chapter 5, section 2).

1.3.7 "Acrostic" (*Acrostico*, Ἀκρόστιχον, Акростикъ)

This was the income of 100 perpers paid by the maritime towns Bar and Budva (see Chapter 6, section 2).

1.3.8 Tribute in Mast (*Žirovnina*, Жировънина)

This was regulated by article 190 of the Code: "and where in the county there is mast, one half of it belongs to the Tsar and one half to the lord on whose estate it is" (И ако се љ жоупи жиръ роди, тога жира царѡ половина, а томѡ властелинѡ чиа є дръжава половина).⁷⁷ The exaction of a tribute in mast and acorns was an old widespread custom. This tribute is called in Serbia *žirovnina*, from *žir* (жир), an acorn or beech mast. It was known in Byzantium as βελάνιστρων. We find this word in Slavonic form in the schedule of villages belonging to Hilandar in the župa of Strymon (Στρυμών or Struma in North Macedonia), as *valanistro*, ВАЛАНИСТРО (November 1357 or 1372).⁷⁸

1.3.9 Royal (Imperial) Pre-emption of Meat

This is mentioned in a commercial treaty between King Milutin and Dubrovnik (14 September 1302). The text of the document says that no merchant in market-places can sell or buy meat before the King's meat has been sold (развѣ къди се хоке кралево месо продати, да се зарѡчи по в'семѡ тръгѡ да не продаю ни кѡпѡю меса доколѡ се кралево прода).⁷⁹ As the monarchs on their manors had huge herds of cattle, pre-emption of meat was an important privilege, which brought large revenues.

1.3.10 Extraordinary Aids (*auxilia*, *aide féodale*)

This was due to the Tsar from his subjects and defined by article 128 of the Code (see Chapter 4, section 3).

1.3.11 Revenues from the Monarch's Manors

These were collected from the lands that were the King's or Tsar's personal domain (*territorium regale*). We do not know the exact amount of those reven-

77 Burr, "The Code of Stephan Dušan", p. 537; Novaković, *Zakonik*, p. 144; *Zakonik cara Stefana Dušana*, vol. III, p. 274.

78 Solovjev, *Odabrani spomenici*, p. 164.

79 Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

ues, but indirectly we can come to some conclusions. In the charter presented to the monastery of Hilandar (1348), Tsar Dušan says that he decided to give a tenth part from his annual cattle revenues to the monastery, what figured out at 4000 perpers (и приложис'мо утьъ всега добит'ка живого цю се находи оу царьства ми ... за четири тисоуцта крѣстатѣихъ перперъ).⁸⁰

1.3.12 Income from Fines

These were either in kind (mostly in cattle) or in money, and belonged to the monarch. In connection with this sovereign's right is the name of the tax collector in mediaeval Serbia—*kaznac* (КАЗНЫЦЬ), from *kazna* (КАЗНА) = fine, punishment. The monarch had the right to confiscate the manor of a lord-traitor as well, but any confiscated land was usually given to the Church or to another nobleman.

Besides all the abovementioned revenues, the monarch's wealth increased via numerous privileges, such as: *obrok* or *priselica*, *pozob*, *gradozidanije*, *ponos* and similar (see Chapter 5, 2).

1.4 Relationship with Noblemen

Although the Serbian monarchs were the most powerful people in the State, they were, more or less, dependent on their noblemen. The influence of nobles increased together with the spreading of the territory and economic and political power of mediaeval Serbia. It was also caused by the influence of Byzantium and some Occidental countries.

It seems that at the end of 12th century, the influence of noblemen was not so important. In the hagiography of Saint Sabba, Theodosius says that the noblemen were submissive and obedient (БЛАГОПОКОРИВА, ДОБРОПОСЛОУШЛИВА).⁸¹ King Stefan the First Crowned testifies in his *Life of Saint Simon* that one of Nemanja's lesser lords (*vojnik*, воинъ, literally "soldier") and a nobleman's daughter fell on their knees before the ruler (Пришьдышоу же единомуу утьъ правобѣрныхъ воинъ него и поклонъ колѣнѣ свои; ... и припад'ши къ ногамъ сегомоу), wanting to tell him that heretics were present in his State.⁸² However, from the beginning of the 13th century noblemen became more powerful and

80 S. Mišić and M. Koprivica, "Opšta hrisovulja cara Stefana Dušana Hilandaru" ["General Chrysobull of Tsar Stefan Dušan to Hilandar Monastery"], *SSA* 14 (2015), p. 68. The charter calls cattle revenue *živi dobitak*, lit. live gain, live asset. In several legal documents *živi dobitak* is opposed to *mrtvi dobitak*, lit. dead or inanimate gain, i.e. immovable things. For more details see Chapter 12 (Law of Property).

81 Edited by Daničić, p. 36.

82 Edited by Jovanović, pp. 32, 34.

independent. Starting the biography of his father Stefan Nemanja, King Stefan refers to his noblemen as “my friends and brothers” (ЛЮБИМИЦИ ЖЕ И БРАТНА МОЈА).⁸³ King Vladislav in the chrysobull to the church of Holy Virgin Bistrička, mentions noblemen beside his relatives.⁸⁴ Archbishop Danilo tells us that King Milutin respected and loved his noblemen and their wives as his brothers (И ИЗБРАВЪ ВЕЛИКОИМЕННИТЫЕ СВОЕ ВЛАСТЕЛИ СЪ ЖЕНАМИ ИХЪ ИЖЕ СОУШТЕ ИЕМОУ ІАКО ВЪЗЛЮБЛЕНА БРАТНА).⁸⁵ According to John Cantacuzenos, Serbs have an old custom: when a nobleman or great lord (τις τῶν εὐγενεστέρων καὶ μεγάλα δυναμένων) comes after a long time to his ruler (ἄρχων) and when he has to greet him for the first time, then both of them dismount from their horses and he who is submissive (δουλεύοντα) kisses the ruler, first in the bust and after in the mouth. By the second meeting, the submissive one does not dismount any more, but he greets his sovereign lord (δεσπότης) riding. This was the way of greeting that Cantacuzenos had seen when he visited Dušan's palace (οἰκία).⁸⁶

It seems that Serbian monarchs, before making important decisions, had to consult their noblemen. This is especially testified by Byzantine writers and ambassadors who visited Serbia. Theodore Metochites, for example, complains about King Milutin's noblemen who oppose agreement with Byzantium and who are always ready for war, a permanent source of plunder. All the time Metochites was afraid whether the King would be able to resist the will of his lords.⁸⁷ Nikephoros Gregoras writes that great lords, dukes and commanders (μεγιστάνες καὶ στρατηγοὶ καὶ ταξίαρχοι) stirred Crown Prince (in Serbia so-called “Junior King”) Dušan up, against his father King Stefan Dečanski. When Dušan gave in to their demands, they proclaimed him the supreme King of Serbia (Κράλην Σερβίας αὐτοκράτορα ἀνηγόρευσαν). Stefan Dečanski was captured by the same lords, against the will of his son, and soon he died in jail. As Dušan could not resist the powerful lords, he kept silent.⁸⁸ Although Tsar

83 Ibid., p. 18.

84 Mošin, Ćirković, and Sindik, *Zbornik*, p. 167.

85 *Životi kraljeva i arhiepiskopa srpskih*, ed. Daničić, p. 96.

86 Bonnae II, pp. 261–262; *VIIINJ*, vol. VI, pp. 387–388, n. 103 (comment by B. Ferjančić).

87 Metochites uses very strong terms when describing the Serbian noblemen, such as criminals, robbers of graves, slanderers, men who respect nothing, shameless people, etc. Ed. Mavromatis, pp. 114–115; *VIIINJ*, vol. VI, pp. 133–135 (comment by I. Đurić).

88 Nic. Gregorae, *Byzantina Historia*, IX, 13, vol. I, pp. 456–457. Cf. *VIIINJ*, vol. VI, pp. 211–212, n. 116 (comment by S. Ćirković). Danilo's continuator testifies on the great influence of Serbian noblemen on young Dušan in his *Life of Stefan Dečanski* (*Životi kraljeva i arhiepiskopa srpskih*, ed. Daničić, pp. 207–212).

Dušan became later “probably the most powerful monarch in Europe”,⁸⁹ he stood all the time under the influence of his lords. According to the story of John Cantacuzenos, the Serbian noblemen told their King (Dušan) not to start a war against the Byzantine Emperor, but only if he first attacks him. If Dušan had started a war in spite of their advice, none of them [noblemen] would have joined him (ἡμῶν γὰρ ἀφίξεται οὐδεὶς).⁹⁰ The same writer says that King Dušan took an oath to his great lord Hrelja (Χρέλης), when he became the King’s servant again (Κράλης ... ὅρκους παρείχετο αὐτίκα Χρέλη καὶ ὑπεποιεῖτο).⁹¹ The Serbian noblemen advised King Dušan to take John Cantacuzenos’ younger son Manuel (Μανουήλ) as a hostage (... ἀλλ’ εἴ τι δέοιτο τῆς αὐτῶν ἐπικουρίας, τὸν νωτέρων τῶν υἱῶν ὁμηρεύσοντα καταλείπειν παρ’ αὐτοῖς), as only that way could they be sure that his father John would respect the alliance with the Serbs.⁹² According to Nikephoros Gregoras, John Cantacuzenos wrote in 1343 to his political adversary Alexios Apokavkos (Ἀπόκαυκος), criticizing him because he was trying to win the Serbian King over to his side; Apokavkos was sending precious gifts not only to the King (πρὸς τὸν ἡγεμόνα τῶν Τριβαλλῶν), but also to the queen consort (ἡγεμονίδα σύζυγον) and noblemen who surrounded the monarch (τῶν τοῖς ἡγεμοσὶ παραδυναστευόντων Τριβαλλῶν).⁹³

Theodore Methochites and John Cantacuzenos write that the young noblemen (γεννικὴ νεότης, τοὺς νέους τῶν εὐγενεστέρων) at the Serbian court met respectable guests in formal clothing and served as their escort.⁹⁴ Article 51 of Dušan’s Law Code starts as follows: “And when a man shall present a son or brother at Court” (И ктѡ прѣдѧ сына [или брата] оу двѡрѣ).⁹⁵ Considering the

89 S. Runciman, *Byzantine Civilization* (New York 1994; originally published in 1933), p. 228.

90 Bonnae I, p. 283; *VIIINJ*, vol. VI, pp. 331–332, n. 106 (comment by S. Ćirković). Was it the right of so-called *diffidatio*—cancellation of vassal’s oath? It is hard to say, because we are not sure to what extent Cantacuzenos’ text corresponds to the Serbian reality.

91 Bonnae II, p. 275; *VIIINJ*, vol. VI, p. 405, n. 142 (comment by B. Ferjančić). Hrelja became Dušan’s vassal again in 1342. The oath of a monarch to one of his lords was a result of Occidental influence that penetrated Serbia. The Byzantine concept of Imperial power does not know such a custom. Dušan took an oath to the monastery of Holy Virgin in Likoussada, as well, so called ὁ παρὼν οὗτος ὁρκωμοτικὸς χρυσόβουλος Λόγος τῆς βασιλείας μου (“by oath confirmed chrysobull of My Imperial Majesty”). Solovjev and Mošin, *Diplomata graeca*, p. 158.

92 Bonnae II, p. 290; *VIIINJ*, vol. VI, p. 407, n. 149 (comment by B. Ferjančić).

93 Nic. Gregorae, XIII, 8, Bonnae II, pp. 662–663; *VIIINJ*, vol. VI, p. 251, n. 85 (comment by B. Ferjančić). Cf. B. Ferjančić, “Stefan Dušan i srpska vlastela u delu Jovana Kantakuzina” [“Stefan Dušan and Serbian Noblemen in the Work of John Cantacuzenos”], *Zrvi* 33 (1994), pp. 177–194.

94 Metochites, ed. Mavromatis, p. 103; Cantacuzenos, Bonnae II, p. 262; *VIIINJ*, pp. 110 and 390, n. 107a (comment by B. Ferjančić).

95 Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 44.

abovementioned data, could we say that at the Serbian Court there existed a special service of escort, performed by young noblemen?⁹⁶

1.5 “Junior King” (*rex iunior*, *млади краљ*, “*mladi Kralj*”)

As an order of succession did not exist in mediaeval Serbia, the institution of “Junior King” (*млади краљ*, *mladi kralj*, *млади краљ*, *rex iunior*) was created, who had to be at the same time co-ruler and Crown Prince. The institution penetrated into Serbia under Byzantine and, maybe more, under Hungarian influence. In mediaeval Hungary the “Junior King” was the King’s son, who possessed during his father’s life his own territory, court and administration. He was considered an independent monarch, and so could make wars, conclude peace treaties, give lands as a gift and mint his own money.⁹⁷

The Serbian “Junior King” was mentioned for the first time in 1271 in the peace treaty between Hungarian King Stephen (István) v and Czech King Otokar II. The document says that on the Hungarian side were present, among other relatives, Serbian King Uroš I and his son Stefan (Dragutin), “Junior King” of Serbia (*Bellam, ducem de Machow et de Bozna, fratrem nostrum: Urossium, regem Servie, et Stephanum filium eius, iuniorem regem Servie, generum nostrum*).⁹⁸ As King Uroš was not only defeated but also captured in the war with the Hungarians (1268), he was forced to appoint his elder son Dragutin (son-in-law of Hungarian King Stephen v) as a successor to the throne. However, the Serbian sources give no evidence that Dragutin ruled over his own territory or had the other rights a Hungarian “Junior King” would have had, during his father’s life.

King Milutin was the first Serbian monarch who gave a part of the Kingdom to his son: between 1309 and 1314, his son Stefan Dečanski ruled in Zeta (modern Montenegro) as a regent of his father. However, the Serbian sources do not call him “Junior King”, and it is not certain whether he had the rights of an independent ruler. Some charters attributed to him seem to be forgeries, and there is no firm evidence that he minted his own money. On his court and administration in Zeta we do not know anything for certain.⁹⁹

96 Taranovski, *Istorija*, vol. I, p. 32, suggests that the service on the Court was some kind of school for the young noblemen, where they could learn military and administrative jobs and knight’s manners.

97 B. Homan, *Geschichte des Ungarischen Mittelalters II* (Berlin 1943), p. 177.

98 Jireček, *Istorija I*, p. 183, n. 117.

99 See M. Ivković, “Ustanova ‘mladog kralja’ u srednjovekovnoj Srbiji” [“The Institution of ‘Junior King’ in Mediaeval Serbia”], *IG* 3–4 (1957), pp. 59–79.

According to Serbian documents, it seems that Dušan was the first Serbian Prince who had the full rights of a “Junior King”. The Dečani charter confirms that Dušan was proclaimed as a “Junior King” on the same day that his father Stefan Dečanski was crowned as King, in the presence of the State Council (И БОГОМЪ ДАРОВАН’НЫМЪ ВЪН’ЦЕМЪ КРАЛІЕВ’СТВА СР’БСКАГО ВЪН’ГАНЪ БЫХЪ НА КРАЛІЕВ’СТВО ВЪ ЕДИНЪ ДНЬ СЪ БОГОДАРОВАН’НЫМЪ СЫНОМЪ КРАЛІЕВ’СТВА МИ СТЕФАНОМЪ ... И СЪ ПРѢВЪЗЛЮБАЕНЫМЪ СЫНОМЪ КРАЛІЕВ’СТВА МИ МЛАДИМЪ КРАЛІЕМЪ СТЕФАНОМЪ).¹⁰⁰ When he became “Junior King”, Dušan was 13 years old. He ruled over Zeta, where his court was mentioned being near the city of Skadar (modern Shkodër in Albania) on the River Drimac.¹⁰¹ During the regency, Dušan appears two times as the army commander of his father: in 1329 against Bosnian heretics, *babuni* or *bogumili* (И СЫНА СВОЕГО БОГОМЪ ДАРОВАННАГО СТЕФАНА НАРЕЧЕ ДА Е МЛАДЫИ ПО НІЕМЪ КРАЛЬ, И ПОСЛА ЕГО НА БЕЗБОЖНЫЕ И ПОГАНЬЕ БАБОУНЫ),¹⁰² and against Bulgarians in the famous battle of Velbužd (1330).¹⁰³ “Junior King” Dušan had his own standard-bearer (*vexilifer regis iuvenis*) which was the privilege of a King and his co-ruler.¹⁰⁴ We do not know whether Dušan minted his own money, but he had a seal with the inscription *mladi kralj* (“Junior King”), which he continued to use on some documents even when he became King.¹⁰⁵

When Dušan became King (September 1331) he was crowned for the second time at the State Council. As his father did with him, Dušan proclaimed his son Uroš “Junior King”, though he was still under age.¹⁰⁶ According to the Byzantine writer Nikephoros Gregoras, when Dušan proclaimed himself Tsar, he divided the State territory into two parts: Serbian lands, which conferred to his son Uroš, and Roman (Byzantine) lands, which were governed by himself.¹⁰⁷ As Dušan was Tsar, Uroš became *King* (instead of “Junior King”). That is the reason

100 Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 74.

101 *Životi kraljeva i arhiepiskopa srpskih*, ed. Daničić, p. 209.

102 Stojanović, *Stari srpski zapisi i natpisi*, vol. 1, p. 25.

103 *Životi kraljeva i arhiepiskopa srpskih*, ed. Daničić, p. 190.

104 Cf. Taranovski, *Istorija*, vol. 1, pp. 13–14.

105 Two letters written to the Republic of Dubrovnik (1334 and 1345). Edited by Stojanović, *Stare srpske povelje i pisma*, vol. 1, pp. 54 and 56.

106 As the “Junior King” Uroš (МЛАДИ КРАЛЬ ОУРОШЬ) was mentioned for the first time between summer 1343 and autumn 1345, in King Dušan’s charter presented to the church of Holy Virgin Perivlepta (Περὶβλεπτα, “celebrated”) in Ohrid. In that moment Uroš could have been 6 or 8 years old. Edited by Solovjev, *Odabrani spomenici*, pp. 128 and 129, and V. Aleksić, “Povelja kralja Stefana Dušana ohridskoj crkvi Bogorodice Perivlepte” [“The Charter of King Dušan for the Church of Virgin Mary Perivlepta in Ohrid”], *SSA* 14 (2015), pp. 25 and 26.

107 Nicephori Gregore, *Byzantina Historia* xv, 1, vol. 11, p. 747. For more details on this division see Chapter 8.

why the great treaty with Dubrovnik from 1349 mentions the “Tsar’s and King’s lands” (по землѣи царьства ми и кралеѣвѣ), the “Tsar’s and King’s market-places” (по тръговехѣ царьства ми и кралеѣвехѣ), and the “Tsar’s and King’s nobleman” (ни властелинѣ царьства ми, ни кралеѣвѣ властелинѣ).¹⁰⁸ However, the division between Dušan as Tsar and Uroš as King existed only on paper. It was Dušan who ruled in practice, cherishing the traditions of the Kingdom and emphasizing the saintly origin of the Nemanjić dynasty. That could be clearly seen from article 136 of the Code: “My Imperial writ may not be disobeyed, to whomsoever it be sent, be it to the Lady Tsaritsa, or to the King, or to the lords, great or small, or to any man. No man shall disobey what is written in my writ” (Книга царства ми да се не прѣсѣдѣша гдѣ прихѣди; или кѣ господарѣи царици, или кѣ кралею, или кѣ властѣломѣ великимѣ и малымѣ и вѣсакомѣ чловекомѣ, никто да не прѣбчюне цю пише книга царства ми).¹⁰⁹

Uroš was the only Tsar until 1356, when he appointed his great lord Vukašin (Вукашин) as a co-ruler. Vukašin minted money using the title of King¹¹⁰ and signed his charters as “the true-believing King Vukašin of Serbs and Greeks” (КРАЛЬ ВЪЛКАШИНЪ БЛАГОВѢРНЫ СРЪБЛѢМЪ И ГРЪКОМЪ).¹¹¹ Vukašin’s son Marc (Marko, Марко) was the last person in Serbian history to be mentioned as a “Junior King”, but on his rights we know practically nothing.¹¹²

2 Court Dignitaries

2.1 Before the Twelfth Century

According to the information of Constantine VII Porphyrogenetos and the so-called *Annals of the Priest from Diokleia*, the administrative system in the oldest Serbian lands consisted of the ruler—*knez* (*comes*)—and the most prominent representatives of the tribal aristocracy—*župans* (*comes*, *iupanus*)—who were the heads of the larger groups of tribesmen and territories, the so-called *župas*, over which they ruled. As far as it has been possible to ascertain, such condi-

108 Edited by D. Ječmenica, *SSA II* (2012), pp. 38–40.

109 Burr, “The Code of Stephan Dušan”, p. 524; Novaković, *Zakonik*, p. 103; *Zakonik cara Stefana Dušana*, vol. III, p. 136. Cf. S. Ćirković, “Kralj u Dušanovom zakoniku”.

110 On the other side, the coins had the inscription *Urosius imperator*, which meant that Vukašin recognized Tsar Uroš as his sovereign lord.

111 Charter to his nobleman Novak Mrasorović from January 1366, edited by S. Ćirković, *SSA I* (2002), p. 101.

112 Mention of Marko as a “Junior King” was discovered in an inscription of one church in Prizren. See M. Ivanović, “Natpis mladog kralja Marka sa crkve sv. Nedelje u Prizrenu” [“The Inscription from the Church of Holy Sunday in Prizren”], *Zograf* 2 (1967), pp. 20–21.

tions prevailed during the 9th and 10th centuries. During the following century, there was an evident tendency towards the strengthening of the ruler's authority, first in the Serbian maritime lands. It was confirmed by the fact that the King of Diokleia and Dalmatia Michael (Mihajlo, Михајло) received the royal crown from Rome (c.1077). His State included the old Serbian territories along the Adriatic coast (*Primorje, Приморје*): *Dioclea, Travunia* and *Hum*. Later on *Bosnia* and *Rascia* were included within the territories of the State. At that time, besides *župans*, in *župas* (counties) there emerged their assistants—*satniks* (*centuriones*), officers commanding 100 soldiers (from the Old Slavonic word *сѣтъ, sat, cam*—hundred). According to their decisions, the rulers dispatched *satniks* to carry out various administrative duties including some outside the *župas* in which they lived.¹¹³ Simultaneously, while ruling the State the ruler was assisted by his closest relatives, who shared the power over the State with him. Usually, these were the monarch's brothers and uncles who ruled over individual parts of the State territories in the capacity of *udeoni kneževi* ("territorial lords"). Such a State, called *udeona kneževina* (*shared principality*), often contained several neighbouring *župas* headed by their *župans* and *satniks*.¹¹⁴

2.2 1180–1340

Contrary to the previous period, during the last quarter of the 12th century up to 1340, Serbia underwent intensive economic growth, together with a development of social relations, the rise of culture, and increased political activities. The period was also marked by a swift development of authentic State administration, following by the elimination of competencies and the establishment of numerous new positions and titles.

The general name used for court dignitaries was *vladalci dvora kraljeva* (ВЛАДАЛАЦЪ ДВОРА КРАЛЕВА),¹¹⁵ but among the bearers of new titles the most prominent place within the central administration was held by the *kaznac* (КАЗНИЦЪ,

113 See M. Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama* [Administration in Serbian Medieval Lands] (Belgrade 1977), pp. 5–12. Cf. G. Tomović, "Župan", in *LSSV*, pp. 197–198, and R. Mihaljčić, *Vladarske titule oblasnih gospodara* [Monarch Titles of Mighty Lords] *Sabrana dela, knjiga 11* (Complete Works, Book 11) (Belgrade 2001), pp. 77–87.

114 See M. Blagojević, "Srpske udeone kneževine" ["Shared Principality in Serbia"], *ZRVI* 36 (1997), pp. 45–62.

115 The expression was used for the first time in King Dragutin's charter to the monastery of Hilandar, between 1276 and 1281 (Mošin, Ćirković, and Sindik, *Zbornik*, p. 268). The word *vladalac* comes from the verb *vladati* = to rule. In modern Serbian the word *vladalac* means "ruler, monarch", but in mediaeval terminology *vladalac* meant someone who executed the monarch's will. So, the formula *vladalci dvora kraljeva* means "King's court servants".

camerarius, tax collector) and *tepčija* (тепѣчина, land official). Their common duty was to take care of the total property of the State, each of them having his own competence. The *kaznac* (from *kazna* = fine, punishment) or *veliki kaznac* (*comes camerarius*) of the Serbian King was supposed to collect all income that belonged to the monarch. He accomplished that either personally or through his assistants. Such a conclusion is based on the information given by the Statute of Budva, which says that the Serbian *kaznac* came once a year in the town to collect the tax called *acrostico*.¹¹⁶ The first *kaznac* that the sources mention by name was Grdomil (*casnecius Gerdomil*): in the year 1189 he was still in the service of Princess (*comitissa*) Desislava, widow of Mihajlo, Great Prince from Diokleia (*magni comitis Michaelis uxor*).¹¹⁷

The *tepčija* or *veliki tepčija* ("great land official") was charged with the land property that belonged to the ruler or to the State. For this very reason, he was regularly present whenever the ruler granted part of his domain either to some ecclesiastical institution or to members of the Serbian noblemen (*vlastela*). The *tepčija's* duty was to ascertain the borders between the ruler's and other's estates. The first *veliki tepčija* (*great tepčija*) we know by his name was Obrad (ЉБРАДЪ),¹¹⁸ who was on duty during the reign of King Vladislav (1234–1243).¹¹⁹

Until the middle of the 13th century, the ruler's close relatives, *udeoni knezovi* (territorial lords), assisted in carrying out the duties of the State. In their principalities there existed an autonomous administration organized in a similar way to that of the ruler. Each of the territorial lords (*udeoni knezovi*) had on his territory his *kaznac* and *tepčija* who enjoyed the same authority as the monarch's *great kaznac* or *great tepčija*. The only difference was that their authority was limited to the respective territory.¹²⁰

116 Statute of Budva, Cap. 1, ed. Luketić and Bujuklić, pp. 16 and 92.

117 Solovjev, *Odabrani spomenici*, p. 5. In the charter presented by Devesius, lord of Konavli (today in Croatia, near Dubrovnik) to his daughter Dragoslava and his son-in-law Mikac (c.1148), *Utalez casinicius* was mentioned (ibid., p. 1). However, very probably the document was forgery. Cf. Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 17–24.

118 Oath of King Vladislav to the city of Split from 23 June 1237 (Mošin, Ćirković, and Sindik, *Zbornik*, p. 145).

119 S. Novaković, "Vizantijski činovi i titule u srpskim zemljama XI–XV veka" ["Byzantine Ranks and Titles in Serbian Lands from the 11th to 15th Centuries"], *Glas SANU* 78 (1908), p. 201; M. Blagojević, "Tepčije u srednjovekovnoj Srbiji, Bosni i Hrvatskoj" ["Tepčijas in Mediaeval Serbia, Bosnia and Croatia"], *IG* 1–2 (1976), pp. 7–47, especially p. 24. On *tepčija* see also L. Margetić, "Značenje i porijeklo riječi tepčija i dad" ["Meaning and Origin of the Words *Tepčija* and *Dad*"], *ZRVI* 17 (1976), pp. 55–64.

120 The existence of a few categories of *kaznacs* and *tepčijas* is confirmed by the Dečani charter. Quoting his dignitaries who were present when the monastery was founded, the

During the entire year, in the royal palace there lived a great number of noblemen. Their number was gradually increased since the territory of the State was also substantially enlarged. In order to entertain all close royal advisors, guests and others, it was necessary to provide large quantities of food and drink. Two separate royal services were established for this task: one of them provided and served beverages at the court while the other supplied, prepared and served food provisions. A prominent courtier in charge of drinks had the title of *sluga* (σλοῦγα, σλδγα),¹²¹ or *great sluga* (*regalis pincerna*, wine servant, or πινχέρης from the Byzantine court), while the one in charge of food was called *stavilac* (σταβιλλας, table servant). The duties of the *sluga* included the services of the principal wine servant, while those of the *stavilac* included the services of the chief of the table, corresponding to the Byzantine ὁ δομέστικος τῆς τραπέζης and ἐπὶ τῆς τραπέζης. The first *stavilac* that we know by his name was Đuraš Vrančić, a contemporary of King Milutin and probably the founder of the powerful family Đurašević from Zeta.¹²² However, these were not their only duties, but were rather honorary in nature.

The Byzantine writer George Pachymeres says that Serbian King Uroš sent his *mesazon* (μεσάζων) George (Γεώργιος, Đorđe, Ђорђе) to meet the Byzantine embassy, travelling to his court.¹²³ As Pachymeres did not know the Serbian court hierarchy precisely, he gave to George the rank of *mesazon* (the Emperor's confidant entrusted with administration of the Empire),¹²⁴ thinking that George's dignity was equivalent to the Byzantine *mesazon*. However, as far as we know the rank of *mesazon* did not exist in mediaeval Serbia. George

King uses the plural form: КАЗНИЦЕ И ТЕП'УНИЕ ("kaznacs and tepčijas"). Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 137.

121 *Sluga* means any servant, but in the Serbian court it was a very prominent title. The most powerful noblemen held it, such as Branko, founder of the Branković dynasty, Pribac, Prince Lazar's father, and the very well-known Despot John Oliver. On Branko, see M. Spremić, *Despot Đurađ Branković i njegovo doba* [Despot Đurađ Branković and his Epoch] (Belgrade 1994), p. 17. On Pribac, see Mihaljčić, *Lazar Hrebeltjanović, istorija, kult, predanje*, pp. 13–20 = *Complete Works, Book II*, pp. 15–20. On John Oliver see B. Ferjančić, *Despots u Vizantiji i južnoslovenskim zemljama*, p. 160. See also R. Mihaljčić, "Sluga", in *LSV*, pp. 674–675.

122 On *stavilac*, see R. Mihaljčić, "Stavilac", *IC* 23 (1976), pp. 5–21.

123 G. Pachymeres, *Bonnae* I, pp. 474, 12; éd. Failler, II, p. 455.

124 On the duty of *mezason* in the Byzantine Empire, see J. Verpeaux, "Contribution à l'étude de l'administration byzantine: ὁ μεσάζων", *Byzantinoslavica* 16 (1955), pp. 270–296; H.G. Beck, "Der byzantinische Ministerpräsident", *BZ* 48 (1955), pp. 309–338; R.J. Loenertz, "Le chancelier impérial à Byzance au XIV et au XIII siècle", *Orientalia christiana periodica* 26 (1960), pp. 275–300; L.P. Raybaud, *Le gouvernement et l'administration centrale de l'Empire Byzantine sous les premiers Paléologues (1258–1354)* (Paris 1968), pp. 202–206.

was certainly one of the most prominent lords of King Uroš's court, and he had authority to negotiate with the Byzantine embassy, but it is impossible to say what exactly his title was.¹²⁵

Later on (1299) the same George¹²⁶ was mentioned by Theodore Methochites as the initiator of negotiations for King Milutin's marriage with Byzantine Princess Simonis (Σιμωνις, Симоида). Methochites says that George enjoys the King's greatest confidence and that he got a title of "second *hegemon* in the national army" (ἡγεμὼν ἐν τοῖς τοῦ γένους στρατευμάσι δεύτερος).¹²⁷ The rank of *second hegemon* did not exist in Serbia either, but this title could designate either a great duke (*veliki vojvoda*, ВЕЛИКИ ВОЄВОДА), a military commander in the absence of the King,¹²⁸ or a great lord with a standard (ВЕЛИКИ ВЛАСТЪВЛИНЬ СТЕГОНОША, *veliki vlastelin stegonoša*, *vexilifer*),¹²⁹ mentioned later by article 155 of the Dušan's Law Code.¹³⁰

2.3 *King Dušan's Administrative Reform (1340)*

The largest reform of the administration was carried out in 1340, during the rule of King Stefan Dušan. The aim of the reform was to provide for a more successful division of responsibilities in order to achieve greater efficiency and professionalism. To accomplish this task, new titles and positions were introduced, mostly as a result of Byzantine influence and the teaching of the Christian Church about the high origins of imperial authority. These titles were: *logothet* or *great logothet* (*notarius domini regis* or *cancellarius*, chancellor), *protovestijar* (*comes camerarius*, chamberlain), *great čelnik* (*comes palatinus*), and *dvorodržica* (marshal of the court), while on the local level a new title was *kephalia* (*capitaneus*).

125 *VII NJ*, vol. VI, p. 28, note 56 (Lj. Maksimović).

126 It seems that George was an able diplomat. As we have seen, he negotiated with the Byzantines in the name of King Uroš (1267–1269). The sources mention a certain *comes Georgius* who was in 1273 and 1281 ambassador of the Serbian King in Italy. This is probably the same person. See L. Thallóczy, C. Jireček, and E. Sufflay, *Acta et diplomata res Albaniae mediae aetatis illustrantia* I–II (Vienna 1913–1918), I, no. 264 (nota), no. 470 (nota).

127 Ed. Mavromatis, pp. 106–107; *VII NJ*, vol. VI, p. 119.

128 The opinion of I. Đurić, in *VII NJ*, vol. VI, p. 119, n. 76.

129 Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, p. 37, n. 32, says that a *second hegemon* cannot be a great duke (*veliki vojvoda*), as I. Đurić considered. According to Blagojević, a great duke commands the army in movement, when the King is absent. As George was present at King Milutin's court all the time, negotiating with Methochites, he could not be a great duke, but a great lord with a standard.

130 Burr, "The Code of Stephan Dušan", p. 529; Novaković, *Zakonik*, p. 122; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

The *logothet* or *logofet* (from the Greek λογοθέτης) corresponds to the royal Chancellor in Occidental States. The title was taken from Byzantium. Byzantine sources mention five different sorts of logothetes: a) τῶν ἀγέλων, supervisor of the State herds of horses and mules; b) τῶν ὑδάτων, literally “logothetes of the waters”, an obscure functionary mentioned only once; c) τοῦ δρόμου, who was in charge of the public post, δρόμος = lit. “course”, Latin *cursus publicus*, the system of imperial post and transportation; d) τοῦ πραιτωρίου, coadjutor of the Eparch of the city; and e) τοῦ στρατιωτικοῦ, a high-ranking official who controlled exemptions and the reimposition of taxes on the households of soldiers. The title could only belong to educated persons from the ranks of the higher nobility. The *logothet* (logothetes) had to be familiar with diplomacy, legislation and organization of the Church and religion. According to article 134 of the Code “when the Tsar grants a hereditary estate, let him to whom a village is given pay the logofet 30 perpers for the charter: but to whom a county is given, for each village 30 perpers and 6 to the clerk¹³¹ for the writing” (И цю запише царь вацине; комѣ запише село да есть логофетѣ, ѿ, перьперѣ за хрисовѣдѣ; а комѣ ждѣ ѿ вѣзсакѣго села, ѿ, перьперѣ, а дѣакѣ за писаніе, ѿ, перьперѣ).¹³² Article 25 orders: “And the Lord Tsar and the Patriarch and the logofet shall govern the churches and none other” (Црьквами да вѣлада господинѣ царѣ, и патріарха и логофетѣ, а инѣ никто).¹³³ This means that the logothet’s prerogatives were to execute legal duties in cases when one Church institution with its property was subjected to another Church institution. Also, he was an executor when a respective Church institution was given property and rights of immunity. It seems that the first logothet we know by name was Raiko, in the service of King Stefan Dečanski between 1325 and 1327. However, we cannot find in any documents the title of logothet written together with his name.¹³⁴ The first person for whom we are absolutely sure that they carried the title of logothet (until 1337) was Joanikie (Іωαννικίε, Ioannikios, Ἰωάννης), later Serbian Archbishop and the first Patriarch.¹³⁵

The title of *protovestijar* (протоѡестіиарѣ, πρωτοβεστιάριος, keeper of the Emperor’s wardrobe, successor to the *comes sacrae vestis*) had been very respectable in the Byzantine Empire, and as such was granted only to the Emperor’s

131 The word for clerk is *dijak* (дѣакѣ), from the Greek δίακονος, “servant”, whence the English word “deacon”.

132 Burr, “The Code of Stephan Dušan”, p. 523; Novaković, *Zakonik*, p. 102; *Zakonik cara Stefana Dušana*, vol. III, p. 136.

133 Burr, “The Code of Stephan Dušan”, p. 203; Novaković, *Zakonik*, p. 26; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

134 See Stojanović, *Stare srpske povelje i pisma*, vol. I, 1, pp. 40, 41.

135 Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 167–185.

nephews. In Serbia the *protovestijar* (*protovestiarios*) carried out fiscal policy rigorously in order to provide both the ruler and the State with larger and more stable incomes. At the same time, the *protovestijar* had to ensure a more liberal exchange of goods. To accomplish this, he had to prevent the introduction of new customs duties and the establishment of customs offices in locations where they had not existed before. When a new customs office was opened the *protovestijar* was authorised either to close it or to keep it running. The *protovestijar* was also authorised to participate in the process of account balancing between the monarch and his creditors and debtors. The title was mentioned for the first time in the King Uroš's chrysobull to the monastery of Holy Virgin in Ston (c.1252). The text says that the borders of the village of Osolnik (near Dubrovnik, today in Croatia) were designated by Prince Stefan, together with the priests Spyridon and Methodios, and with the *protobistar* (*protovestijar*) Vratimir (Село ѿ ѿльникъ оу Примори с мегами како ѿ ѿт прѣди было, како си стѣфанъ кнезь ѿтгесалъ с пискоупомъ спридономъ и с пискоупомъ методиемъ, и съ вратимиромъ с протобистаремъ, такози да си стоноу оутврѣж-дено).¹³⁶ Before the reign of King Dušan the title of *protovestijar* was mentioned two times,¹³⁷ but on their competencies we cannot say anything precisely. The administration of the ruler's finances became larger and even more complex during the reign of Stefan Dušan, who also entrusted his financial affairs to the well-known nobleman from Kotor Nikola Buća. His title was, according to the Latin sources, *comes camerarius*. Since Stefan Dušan became Tsar, the dignity of his royal chamberlain was raised to the higher rank. Namely, he assumed the title and the position of the *Tsar's protovestijar*.¹³⁸

The title of *čelnik* (чѣлникъ) was of domestic, not of Byzantine origin. Therefore it was sometimes used in a colloquial sense, implying a meaning of *head* or *chief* (Serbian *čelo*, *чело* = forehead, front) without a more precise definition. As far as has been possible to ascertain, at the lowest level of all kinds of *čelniks*, there were the heads and shepherd guides in the service of the prominent feudal families or rulers. The *čelniks* that performed the duties of grooms were close to this category. By their social position they belonged to the cat-

136 Mošin, Ćirković, and Sindik, *Zbornik*, p. 196.

137 The second time was by King Vladislav II, son and successor of King Dragutin, who mentioned in 1323 *protobistial jurech* as one of the sureties on a payment receipt issued to a certain Kliment Gučetić (T. Smičiklas, *Diplomatički zbornik Kraljevine Hrvatske, Dalmacije i Slavonije*, vol. IX (Zagreb 1911), pp. 146, 147). In the monastery of Dobrun (c.1343) we can find the portrait of *Stan protovistar*, but on his personality we know practically nothing. See Z. Kajmanović, *Zidno slikarstvo u Bosni i Hercegovini* [Wall Painting in Bosnia and Herzegovina] (Sarajevo 1971), pp. 101–110.

138 See Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 186–203.

egory of lesser lords (*vlasteličići*). The great church or monastery estates had as their *čelniks* people coming from the nobility. Their basic duty was to provide the protection for all goods on the manor, to defend the monastery by arms and to command a military unit. The *čelniks* played a more complex role in the individual episcopacies and metropolitans. They were expected to be familiar with agrarian relations and existing legal acts, and to issue documents on legal transfers.

The *čelniks* had to perform more complex duties in the State administration or at the ruler's court. As the representatives of administration, the *čelniks* emerged later than the *kaznacs* and *tepčijas*. It seems that from the beginning they were in charge of the ruler's personal security. The Serbian Kings often used the services of the representatives of the administration, especially when it was necessary to separate the Church from the lay estates. For the realization of this kind of duties, the *čelniks* were very convenient officials. They acted on behalf of the ruler and they could use military power. At the time of Tsar Stefan Dušan, they had appeared as military commanders of the most important fortresses that were under the immediate authority of the Serbian King or Tsar. At the royal court, the *čelnik* was also in charge of a part of the court personnel. He also took care of the protection of the ruler himself and his property, while simultaneously, on behalf of the ruler, giving the necessary protection to the Church estates. These, as well as other prerogatives, contributed to the greatest degree that *čelniks* became more important and almost completely extinguished the *tepčijas* from the central administration. Obviously, there was no reason for two institutions to carry out the same duties.¹³⁹

As far as can be established, the first *čelnik* in the service of the Serbian Kings was mentioned in a Ragusan document of 11 August 1284. When King Milutin got married to the Bulgarian Princess Anna (ΑΝΝΑ), the Ragusans decided to give a present of 400 perpers to the King and at the same time to give a present to his *čelnik* Gradislav, valued at 26 perpers (*Gradislauo, celnico suo, donati fuerunt yperperi xxvi*).¹⁴⁰

The management of different duties and tasks at the smaller courts was entrusted to a person who had the title of *dvorodržica* (ДВОРОДРЪЖИЦА, παλατοφύλαξ from Byzantine court), that is, the head of the royal household or "marshal of the court" (Serbian *dvor* = court, house, and *držati* = to hold). This

139 Ibid., pp. 208–245.

140 *Istoriski spomenici dubrovačkog arhiva, serija treća, sveska 1* (*Monumenta historica archivi Ragusini, series tertia, fasciculus 1*), *Kancelariski i notariski spisi 1278–1301* (*Acta cancellariae et notariae annorum 1278–1301*), collected and edited by G. Čremošnik (Belgrade 1932), p. 122, no. 354.

service was more concerned with the court and the personality of the ruler and less with State affairs. According to the values of the feudal society, the *dvorodržica* was expected to be “loyal till the end” (*veram mu do kraja*) to his lord. In return for his loyalty, he enjoyed the respect and friendly benevolence of the ruler. He was primarily involved in taking care of all persons at the court and in the immediate ruler’s service. When the *dvorodržica* appeared in the role of a member of the State government, he had the right to issue “orders” throughout the country. It seems that his orders pertained to the execution of certain duties and obligations towards the ruler. The construction of a ruler’s “house” or “court” was such an obligation. It also included transportation of the ruler’s personal belongings and certain services when hunting, either with hounds or falcons (гѣрекарѣство). Finally, it included the provision of the “meals” (ѡброкъ) for the monarch and his escort and the preparation of their lodgings.¹⁴¹

The oldest mention of a *dvorodržica* might be found in the charter of Alexander (Алекѣѡдръ), lord of Kanina and Valona (modern Kavajë and Vlorë in Albania), presented to the Ragusans on 2 September 1368. At the end of the document, Alexander says that the charter was issued with the oath of the most prominent lords (Аво властели кои присегнѡмо), all mentioned by their names. Among them we find *dvorodržica Raiče* (и раниче двородрѣжница).¹⁴²

The professionalization of individual services was evident in the central as well in the local administration. In the later case it occurred with the introduction of the title and position of *kephale* (κεφαλῆα, κεφαλῆα, ἡ κεφαλὴ, ὁ κεφαλατικεύων, *capitaneus*). The title was of Byzantine origin,¹⁴³ and within the structure of the Serbian State did not change its essence. It is quite obvious that the *kephales* had existed in all parts of the State, especially in those that Kings Milutin, Stefan Dečanski and Stefan Dušan took from the Byzantine Empire. Before the conquest of these parts, the abovementioned dignitaries, as imperial plenipotentiaries and high officials, had performed duties as administrators of these provinces. Depending on the size of the territories over which they ruled, they were known as *general* or *local kephales* (καθολικῶς ἢ μερικῶς). The former had administrated over certain historic regions, such as Thessaly, or over a group of several administrative units; the later had administrated over strictly limited territories consisting of one or two towns. The inclusions of the Byzantine territories within the authority of the Serbian Kings and Emperors led

141 See R. Mihaljčić, “Dvorodržica”, in *LSSV*, pp. 142–143.

142 Stojanović, *Stare srpske povelje i pisma*, vol. I, 1, p. 115.

143 On the duty of the *kephale* during the last two centuries of Byzantine history, see Lj. Maksimović, *The Byzantine Provincial Administration under the Palaiologoi* (Amsterdam 1988), pp. 117–166.

to the adoption of the Byzantine system of local administration. The only difference was that the Serbian rulers appointed their people as the heads of their administrations. *Kephale* Raiko had performed his duty in Trilisios and Brontos (in Greece),¹⁴⁴ *kephale* Vladoje in Polog (in North Macedonia),¹⁴⁵ and *kephale* Miloš in Prilep (in North Macedonia) (А томоу милостникъ Милошъ кефалиа прилѣпъски).¹⁴⁶ A similar practice was evident in other areas south of Skopje as well. It seems that during the rule of King Milutin, the *general kephales* were first introduced in the Skopje region and Zeta (modern Montenegro),¹⁴⁷ while the introduction of the *local kephales* came later.

Before the first part of Tsar Dušan's Law Code was promulgated (1349), the institution of the *local kephales* had been spread throughout the Serbian State. The sources mention the existence of this duty in Štip (1332 and 6 May 1336), Orehovo, county (*župa*) of Mraka (1339), Vranje (1343–1345), Ohrid (1343–1345) and Hvostno (1348).¹⁴⁸ Thus, the Code only legalized and sanctioned its existence.

144 King Dušan's Greek *prostagma* presented to Raiko (September–December 1345) begins as follows: "Οἰκεῖέ μου Ῥάϊκο, κεφαλῇ Τριλισίου καὶ Βροντοῦς" ("O, my courtier Raiko, kephale of Trilisios and Brontos"). See Solovjev and Mošin, *Diplomata graeca*, p. 24.

145 The name is mentioned in the list of the estate of the Holy Virgin monastery in Htetovo, done around 1343 (ИЗДАДЕ БЛАГОЕ КЕФАЛИА ПОЛОШКИ). Edited by Slaveva, Miljkovic-Peppek, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, pp. 294–295. According to Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, p. 252, n. 31, Vladoje had, perhaps, the rank of *general kephale*. However, in Serbia not a single *general kephale* is known by name (See Maksimović, *The Byzantine Provincial Administration*, p. 136, n. 124).

146 King Vukašin's charter from January 1366, confirming the gift of his nobleman Novak Mra-sorović to the Russian monastery of Saint Pantheleimon on Holy Mountain. SSA 1 (2002), p. 101.

147 King Milutin's charter (c.1300) confirming the gift of his father Stefan Dečanski, who gave the cell of Saint Petka (Paraskeve) in Tmorane to the monastery of Hilandar, says that the "city kephale [kephale of Skopje] has no competencies there [on the monastery of Hilandar's manors]" (И кефалиа градьскыи да не има вѣласти тамо). Mošin, Ćirković, and Sindik, *Zbornik*, p. 333. Ragusan documents mention *nobilis et potens vir dominus Ylia cefalia* who came to Ragusa on 27 October 1321, to take so-called Saint Demetrios' revenue in the name of King Milutin (Jireček, *Spomenik SANU* XI, p. 24). Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 249–251, suggests that both, anonymous *kephale* of Skopje and Ylia, *kephale* in Zeta, had the ranks of *general kephales*, because they governed over particular historical regions.

148 1) Two chrysobulls of King Stefan Dušan confirming the donations of Hrelja to the monastery of Hilandar in Štip and Strumitza. Edited by Petrović, SSA 13 (2014), pp. 7 and 14; 2) Chrysobull of King Dušan to the monastery of Saint Nicolas Mrački in Orehovo. Edited by Marjanović-Dušanić, SSA 2 (2003), p. 57, line 3) Charter of King Dušan giving the church of Saint Nicolas in Vranje to the monastery of Hilandar. Edited by Marjanović-Dušanić, SSA 4 (2005), p. 74; 4) Charter of King Stefan Dušan to the church of Holy Virgin Perivlepta in

Several articles of the Code determine the rights and duties of a *kephale*. Article 63 (from the first part of the Code) constitutes the right of pre-emption to a *kephale*: “Kephales who are in the cities shall take their income according to law, and let corn and wine and meat be sold to them at one dinar¹⁴⁹ which is sold to others for two; and citizens alone may sell to him and none other” (Кепаліе цю сѣ по градовѣх да оузымаю свои доходыкъ закономъ; и да им’ се продаваю жита и вина и мяса за динарь цю иномѣ за два; нъ грагѣанинѣ този да мѣ продава, а инѣ никто).¹⁵⁰ In addition to a *kephale*’s former duties, they were now also entrusted with responsibility for maintaining order on the Tsar’s highways, and based on the old principle, they were to hold pecuniary responsibility for robberies and thefts committed within their area (articles 157 and 160). Article 157:

Where there are mixed counties, ecclesiastical and Imperial villages, or seigneurial, and all the villages are mixed, and there is not one lord over the whole county, but if there are kephales and judges whom I have appointed, let them place guards on all roads, and let them hand over the roads to the kephales, to keep them with their guards, and if anyone rob or steal or do any crime, let recourse be had forthwith to the kephale, who shall pay him from his own house, and the kephales and patrols shall seek the robbers and thieves.

Гдѣ се вбръѣтаю жоупѣ смесне села црѣковна, или царства ми, или властѣл’ ска и боудѣ смѣсна села, и не боудѣ на том’зи жоупомѣ еднога господара; нъ ако боудѣ кѣфаліе и соудіе царства ми, коихъ кѣсть поставило царство ми, да поставѣ страже по вѣсѣхъ путѣхъ и кѣфаліамъ да прѣбдаде поутовѣ да ихъ блюдѣ стражами; да ако се кто гоуси или оукрадѣ, или које зло оучини, тѣзѣи часѣ да гредѣ кѣфаліамъ, да имъ плакіаю ѡт свое коукие; а кѣфаліе страже да ищѣ, и гоусаре и тати.

Article 160:

If it is to happen that any traveller, merchant or monk be robbed of anything by a brigand or thief, or be in any way detained, let them all come to

Ohrid. Edited by Aleksić, *SSA* 14 (2015), p. 26; 5) Skopje chrysobull of Tsar Stefan Dušan for the kellion of Saint Sabba from Jerusalem in Kareia. Edited by Živojinović, *SSA* 7 (2008), p. 63.

149 The *dinar* was the 12th part of a perper. The word comes from the Latin *denarius*.

150 Burr, “The Code of Stephan Dušan”, p. 210. Burr translated the word *kephale* as “governor”; Novaković, *Zakonik*, p. 52; *Zakonik cara Stefana Dušana*, vol. III, p. 116.

me and I will repay them what they have lost and I will recover it from the kephales and lords to whom the patrolling of the road was entrusted. And let any traveller, merchant or Latin come to the first guard with all that he has and bears with him, that the guard deliver him to guard all the way. And if it so happen that he lose anything, there is the jury of trusty men, and whatsoever they shall swear upon their soul to those jurors, that shall the prefects and guards pay them.

Ако се гдѣ слоучи комѣ любо гостевѣ или тръговѣцѣ, или калѣгѣрѣ тере мѣ оузме цю гоуса, или татѣ или коѣ годѣ забава; да гредѣ тызѣи вѣси кѣ царствоу ми да имѣ плати царство ми цю боудѣ изгоубили; а царство ми да ицѣ кнефалѣе и властѣле коимѣ боудѣ поуѣть прѣданѣ и страже прѣданѣ, и вѣсакы гостѣ и тръговѣцѣ и латининѣ да прихѣди кѣ прѣвыимѣ стражамѣ, сѣ вѣсѣмѣ цю има и носи да га стража страже прѣдава сѣ вѣсѣмѣ; ако ли се зѣгоди тере цю изгоуби, да ѣсть порота вѣровали чловѣци цю рекѣ доушомѣ ерѣ сѣ изгоубили сѣнемѣзи поротници този да имѣ плати кнефалѣе и страже.¹⁵¹

Article 184 prescribes: "My lords and kephales who hold the towns and market-towns may none of them receive any man for the prison without my warrant. And if any such do receive such a man without my command, let him pay me 500 perpers" (Властѣле и кнефалѣе царства ми, кои дръже градовѣ и тръговѣ; никто уѣт ныхѣ да не приме чѣега чловѣка оу тѣмницѣ безѣ книгѣ царства ми; ацѣ ли кто кога приме прѣзаповѣдѣ царства ми, да плати царствоу ми, ф, перѣ-перѣ).¹⁵² According to article 194, a *kephale* acts as a judge of the mixed court, but he has no right to collect fines:

The law of fines for Church people. What is adjudged before the Church or kephale, and those fines which are imposed, let the Church have them all, as is written in the charters. Those fines shall be taken from Church people, as the Lord Tsar ordained the law of the land, and let Church officials be appointed treasurers, who will collect the fines and deliver them to the Church, and the Tsar and the kephale shall take nothing.

И глобѣ на църквѣныхѣ людѣе законѣ. Чѣто се сѣдѣ прѣдѣ църквомѣ и прѣд кнефалѣемѣ, и ти глобѣ чѣто се всѣдѣ да има вѣсѣ църква, како пишѣ оу

151 Burr, "The Code of Stephan Dušan", pp. 530–531; Novaković, *Zakonik*, pp. 123 and 125–126; *Zakonik cara Stefana Dušana*, vol. III, pp. 144 and 146.

152 Burr, "The Code of Stephan Dušan", p. 530; Novaković, *Zakonik*, p. 142; *Zakonik cara Stefana Dušana*, vol. III, p. 154.

хрисоволихъ те глобе да се оузимаю на цркъвнынхъ люди како є поставимъ
господинъ царь законъ по зем'ли, и да се поставе цркъвнынхъ людѣе глобарѣе
кои ге събирати те глобе, и прѣдавати цркъви, а царь ни кнефалѣе да не
ѡзимаа ница.¹⁵³

On a *kephale*'s prerogatives in military affairs we do not have much knowledge, but since each town had been fortified, a *kephale* was the captain of the fortress and its troops. In the largest urban fortifications existed another *kephale*, called a *kulski* (from *kula* = tower, fortress).¹⁵⁴ Each of them was under the direct control of the ruler. The *kephale* took care of the regular upkeep of the fortification and the regular functioning of the guards. In order to keep the fortresses in good shape, they had to be from time to time repaired, fortified and sometimes enlarged. The common term for this obligation was *gradozidanije* (see Chapter 5, sections 1 and 4). Much the same can be said for the duty called *gradobljudenje*—guarding of the town (see Chapter 5, sections 1 and 5).

The *kephale* was also obliged to organize the transport of the Tsar across the region under his administration (see article 60 of the Code), as well as to help with the transferring of larger military units.

2.4 Byzantine Titles

After Dušan's proclamation as Emperor (Tsar) in 1346, the most important Byzantine court titles were introduced into Serbia, such as *despot*, *sebastokrator* and *caesar* (*kesar*).¹⁵⁵ According to the Byzantine constitution the right of giving those titles belonged only to the Emperor. That was the reason why the

153 Burr, "The Code of Stephan Dušan", pp. 537–538; Novaković, *Zakonik*, p. 145; *Zakonik cara Stefana Dušana*, vol. III, p. 276. The competence of *kephale* as a judge is confirmed by Tsar Dušan's treaty with Dubrovnik from 20 September 1349. The text says that Ragusan merchants, in a case of dispute, shall be adjudged before a customs officer, lord or *kephale* of the town (да се сѡде прѣдъ царинникомъ и к'неземъ, а или прѣдъ кнепалникомъ, кои бѡде градъ, тогдази). *SSA* II (2012), p. 39. However, Prince Lazar and Vuk Branković allowed the Ragusans (1387) to be adjudged before their own magistrates (да се прѣдъ к'незѡмъ дѡбровѣчкимъ и прѣдъ нихъ сѡдниками). Charter of Prince Lazar to Dubrovnik from 9 January 1387, edited by Mladenović, *Povelje kneza Lazara*, p. 193; charter of Vuk Branković to Dubrovnik from 20 January 1387, edited by Šuica and Subotin-Golubović, *SSA* 9 (2010), p. 102.

154 Giving to the monastery of Hilandar, the monastery of Saint George near Skopje, with its manor (1 September 1376–31 August 1377), Vuk Branković says that over the manor there cannot be either "the city kephale" nor "the fortress kephale" (да несть надъ нимъ ни кнефалине градьского, ни коульского). Edited by Bojanin, *SSA* 8 (2009), p. 121.

155 On Byzantine titles in Serbia see Novaković, "Vizantijski činovi i titule", pp. 178–280. Cf. Lj. Maksimović, "Recepcija vizantijskih državnih institucija u Srbiji i Stojan Novaković"

Serbian monarchs, before Dušan's proclamation as Tsar, did not give titles of the highest imperial rank, although the sources mention their existence even before 1346. However, in those cases they must have been of foreign origin, either Byzantine or Bulgarian. The Tsar's relatives and the most prominent lords carried the titles of *despot*, *sebastokrator* and *kesar*, but those titles designated only honours and ranks, not special functions.

Initially the Greek word *δεσπότης* corresponded to the Latin term *dominus*, and in the later Roman Empire it became the popular name used for Roman (Byzantine) Emperors. From 1163 it was transformed into a special title, the highest in rank, after the Emperor's. However, in some cases Byzantine writers even after 1163 used the term *δεσπότης* to designate the Emperor, foreign rulers and some ecclesiastical dignitaries.¹⁵⁶

The title of *despot* was mentioned in Serbia for the first time in the charter of King Stefan Dečanski giving some estates and privileges to the Holy Virgin monastery in Prizren (April 1326). The King says that he sent *despot* Dragoslav and bishop Arsenije (Arsenios) to control the execution of the charter (и пакъ посла кралеѣвство ми деспота Драгослава съ епископомъ Арсениемъ да ихъ изнадю, да си не има света цркви како не испрѣва было).¹⁵⁷ As Božidar Ferjančić suggests, Dragoslav got the title of *despot* from the Bulgarian court, neither from Serbian King Milutin nor his son Stefan Dečanski, like Stojan Novaković thought.¹⁵⁸ Milutin and Stefan Dečanski, not being no Emperors, did not have the right to give the title of *despot*. However, after 1346 the Serbian Tsar started to give the title of *despot* to his relatives and the great lords (вельможа, *velmoža*), such as John (Jovan) Oliver, John Komnenos, Dušan's half-brother Simon (Siniša), Dejan, husband of Dušan's sister Theodora, John Uglješa and others.¹⁵⁹ Since 1402 the title of *despot* designated the Serbian ruler (see above).¹⁶⁰

The title of *sebastokrator* (σεβαστοκράτωρ) was created in Byzantium at the beginning of the reign of Emperor Alexios Komnenos (1081). On that event his daughter Anna, in her famous book *The Alexiad*, wrote:

["Reception of Byzantine State Institutions in Serbia and Stojan Novaković"], in *Stojan Novaković—ličnost i delo* [Stojan Novaković—His Personality and Work] (Belgrade 1995), pp. 267–272.

156 On the different meanings of the term *despot* in Byzantine sources, see Ferjančić, *Despoti*, pp. 3–8. On *despots* in Byzantium see also R. Guiland, "Études sur l'histoire administrative de l'Empire byzantin: le despote, *δεσπότης*", *REB* 17 (1959), pp. 52–89.

157 Edited by Mišić, *SSA* 8 (2009), p. 17.

158 Ferjančić, *Despoti*, p. 158; Novaković, "Vizantijski činovi i titule", pp. 237 and 245.

159 On the career of those noblemen, see Ferjančić, *Despoti*, pp. 157–181.

160 Ferjančić, *Despoti*, pp. 182–194.

Alexius had promised Nicephorus Melissenus [his brother-in-law] the title of caesar. Isaac, the eldest of his brothers, therefore had to be honoured with some higher dignity, and as there was no such rank between that of Emperor and caesar, a new name was invented, a compound of *sebastos* (σεβαστός) and *autokrator* (αὐτοκράτωρ). Isaac was created *sebastokrator*, a kind of second Emperor (δεύτερον βασιλέα) and senior to the caesar, who received the acclamation in third place.¹⁶¹

In Serbia, this title was introduced after Dušan's proclamation as Tsar (April 1346),¹⁶² but the sources also mention its existence many years before. A very well-known charter presented by King Milutin (1300) to Saint George's monastery near Skopje speaks of a certain Vericha, who committed the crime of high treason, running away to the "sebastokrator Kaloyan Sinadin" (Изневѣри бо се Вериѡа крѡлиевствоу ми и побѣже к севастократору Калояну Синадинову).¹⁶³ In the letter of Pope Benedictus XII (born Jacques Fournier, the third Avignon Pope, from 1334 to his death 1342) to the Archbishop of Split (16 September 1336), speaking on the obligations of the citizens of Kotor towards the Serbian noblemen, an anonymous *sebastocrator* was mentioned, to whom they had to pay 500 perpers (*Sevastocratori quingentos*).¹⁶⁴ King Dušan's charter issued to the monastery of Holy Virgin Perivlepta in Ohrid (1343–1345), mentions "my Royal nobleman, sebastokrator Kersak" (ВЛАСТЕЛИНЬ КРАЛИЕСТВА МИ СЕВАСТОКРАТОРЬ КЕРСАКЪ).¹⁶⁵ However, as Božidar Ferjančić proved, those *sebastokrators* got their titles either from Constantinople or from Trnovo (capital of the Bulgarian mediaeval State).¹⁶⁶

It seems that the first Serbian nobleman who got the title of *sebastokrator* from Emperor Dušan was the famous John (Jovan) Oliver. The rise of his court career can be perfectly seen from the inscription in the *naos* (cella) of his foundation, the monastery of Lesnovo (in North Macedonia), saying: "Me, John Oliver, the slave of God, by the mercy of God and my Lord King Stefan, have been among the Serbs the great *čelnik*, then the great servant, then the great duke, then the great sebastokrator and then, for the faithful service by

161 *Alexiade* III, 4, éd. Leib, vol. I, p. 113; English translation by Sewter, p. 111. On *sebastokrators* in Byzantium see Ferjančić, "Sevastokratori u Vizantiji".

162 On *sebastokrators* and *caesars* in the Serbian Empire, see B. Ferjančić, "Sevastokratori i kesari u Srpskom carstvu" ["Sebastokrators and Caesars in the Serbian Empire"], *ZFFB* X-1 (1970), pp. 255–269.

163 Mošin, Ćirković, and Sindik, *Zbornik*, p. 323.

164 Solovjev, *Odabrani spomenici*, p. 122.

165 Edited by Aleksić, *SSA* 14 (2015), p. 26.

166 Ferjančić, "Sebastokratori i kesari", p. 257.

the mercy of God, the great despot of all Serbian and Maritime lands and part of Greeks" (Азь рабъ Христовъ Іуанъ Оливеръ по милости божиен госпо-дина ми крала Стефана Бихъу Срьбелемъ великы челникъ потмъ велики слѣга потмъ велики воевода, потмъ велики севастораторъ за вѣрное ему поработание по милости божиен и велики деспотъ всеа срьбские земли и поморские и ѹчестникъ грѣкомъ).¹⁶⁷ As the inscription shows, John Oliver had a brilliant career, he carried all the important titles and finally became a *despot*. It seems that he had the title of *sebastokrator* for one year only and then was promoted to *despot*.¹⁶⁸ Dejan, Dušan's brother-in-law had a similar career. He received the title of *sebastokrator* during the reign of Stefan Dušan, because the Tsar calls him "my imperial brother, sebastokrator Dejan" (братъ царства ми севастораторъ Деянъ).¹⁶⁹ Later on, Dejan got the title of *despot*, probably from Tsar Uroš.¹⁷⁰ Among the other noblemen who carried the title of *sebastokrator*, the sources mention Branko Mladenović, father of Vuk and Grgur Branković, and Vlatko, whose manor was near Kriva Palanka (in south of Serbia).¹⁷¹

The old Roman and Byzantine title of *caesar* (καίσαρος, кесарь, *kesar*) was introduced in the Serbian Empire as well. The first Serbian nobleman carrying that title was Grgur Golubić, mentioned in the letter of Pope Clement VI (March 1347)¹⁷² as *Gregorius Golubic, caesar regni Rascie*.¹⁷³ Among the bearers of that title, the best known was the military commander Preljub, conqueror of Thessaly. The sources also mention a *kesar* Voihna, lord of the Drama region (in north Greece), a certain Novak (probably Novak Mrasorović) and Vlatko's son Uglješa.¹⁷⁴

167 I. Ivanov, *Blgarski starini iz Makedonija* [Bulgarian Antiquities from Macedonia] (Sofia 1908), p. 158; Bošković, Đ., "Nekoliko natpisa sa zidova srpskih srednjevekovnih crkava" ["Several Inscriptions from the Walls of Serbian Mediaeval Churches"], *Spomenik SKA* 68 (1938), p. 10.

168 Ferjančić, "Sevastokratori i kesari", p. 259; *Despoti*, pp. 160–162.

169 "Dva prepisa potvrdne hrisovulje Stefana Dušana povodom osnivanja manastira Vavedenje Presvete Bogorodice, zadužbine sebastokratora Dejana u selu Arhiljevici kod Preševa" ["Two Transcripts of Confirmatory Chrysobull of Stefan Dušan Regarding the Foundation of Monastery Presentation of the Blessed Virgin Mary of Sebastokrator Dejan in the Village of Arhiljevica near Preševo"], 10 August 1354, edited by V. Aleksić, *SSA* 12 (2013), pp. 34 and 43.

170 Đ. Stričević, "Jedna hipoteza o titularnom imenu srpskih despota u XIV veku" ["One Hypothesis on the Titular Name of Serbian Despots in the 14th Century"], *Starinar* 7–8 (1956–1957), p. 117.

171 Ferjančić, "Sevastokratori i kesari", pp. 260–262.

172 Born Pierre Roger, Clement VI was the fourth Avignon Pope (1342–1352).

173 K. Jireček, "Srpski car Uroš, kralj Vukašin i Dubrovčani" ["Serbian Tsar Uroš, King Vukašin and Ragusans"], in *Zbornik K. Jirečeka I* (Belgrade 1959), p. 362, n. 58.

174 On Grgur Golubić, Preljub, Voihna and Uglješa, see Ferjančić, "Sevastokratori i kesari", pp. 263–268.

Some Serbian legal documents mention the title of *sebastos* (σεβαστός, сѣвастъ, *sevast*), which is no doubt of Byzantine origin. The term was the Greek translation for the Emperor's Latin title—*Augustus*. However, from the time of Emperor Alexios I Comnenos the title lost its importance and became part of many compound titles such as *sebastokrator*, *panipersevast*, *sevastoiPERTAT*,¹⁷⁵ and, in the time of Palaiologoi, *protosebastos* (πρωτοσέβαστος), *pansebastos sebastos* (πανσέβαστος σεβαστός) and *pansebastos* (πανσέβαστος).

In Byzantium the *sebastos* was a title, but in Serbia this rank was transformed to a certain extent. Having remained in the same field of administration, its bearers performed relatively defined functions, mainly cadastral and financial duties. King Milutin's second general charter in favour of the monastery of Hilandar (1303–1304) mentions *sebastos* Obrad Maniak, whose task was to fix the manor borders (А те мегѣ оутеса сѣвастъ ѿбрадь маниаць).¹⁷⁶ A *sebastos* could collect fines, as well. The famous Saint George's charter provides that a violator who obstructs the normal irrigation of monastery land has to pay a fine (so-called *potka*)¹⁷⁷ of 21 perpers to a *sebastos* (да плати поткоу сѣвастоу .Ѡ. перперь).¹⁷⁸ The same charter forbids all the King's servants (among the quoted dignitaries *sebastos* was mentioned too) from judging the monastery's serfs (чловѣкоу Светаго Гевургия да не соуди никои владоуци по дръжавахъ кралѣвства ми, ни да дае втрока на нь, ни казньць, ни тепъни мали, ни соудниа вели ни мали, ни сѣвастъ, ни прахторъ, ни сѣвастъ градски, ни прахторъ градьскы, ни страже градоу, ни соудниа градоу, ни соудниа жоупьски, ни кнезь жоупьски),¹⁷⁹ and this has led to the conclusion that a *sebastos* had some judiciary competences. However, the most frequent mention of *sebastos* in the sources is in quotations of the list of court dignitaries who were not allowed to enter the monastery manors without the permission of the superior (*hegoumenos*).¹⁸⁰

175 Cf. L. Bréhier, "L'Origine des titres impériaux à Byzance", *BZ* 15 (1906), p. 160; L. Stiernon, "Notes de prosopographie et de titulature byzantines: sébaste et gambros", *REB* 23 (1965), pp. 226 sq.

176 Mošin, Ćirković, and Sindik, *Zbornik*, p. 376.

177 *Potka* (потка) means at the same time any violation of someone else's estate, a conflict between two villages as to borders, and finally the fine paid in respect of the conflict. For more details see Part 5 (criminal law).

178 Mošin, Ćirković, and Sindik, *Zbornik*, p. 322.

179 Ibid., p. 326.

180 Ibid., pp. 269, 317, 324, 326; *SSA* 2 (2003), p. 57; *SSA* 4 (2005), p. 74; *SSA* 5 (2006), p. 119; *SSA* 7 (2008), pp. 63, 77; *SSA* 13 (2014), pp. 7, 188; *SSA* 14 (2015), pp. 26, 71; *SSA* 15 (2016), p. 134. On *sebastoi* in Serbia, see Lj. Maksimović, "Sevasti u srednjovekovnoj Srbiji" ["The Sebastoi in Medieval Serbia"], *Zrvi* 32 (1993), pp. 139–147.

These were the most important Byzantine titles adopted in Serbia, although the sources mention many others, but on their competencies we know practically nothing.

2.5 “Executor” (*milosnik*, МИЛОСТЪНИКЪ)

In numerous Serbian mediaeval documents, starting from the epoch of Stefan Dušan, the term *milosnik* (МИЛОСТЪНИКЪ) is frequently mentioned. The name comes from the word *milost* (МИЛОСТЬ), basically meaning “grace”, “mercy”. In legal documents, however, the term *milost* was used whenever the ruler wanted to confirm already acquired rights, conclude commercial treaties or confirm that some financial transaction had been fully realized. The regular formulas used in Serbian charters were *stvoriti milost* (“make milost”), *dati milost* (“grant milost”), *darovati milost* (“present milost”) and *zapisati milost* (“write down milost”). The King’s or Tsar’s servant who was an executor of this *milost* was called a *milosnik*. This means that the *milosnik* was an executor of a certain legal activity or a guarantee that some legal procedure or decision would be carried out. Even more convincing proof of this was discovered in the Latin translation of the Serbian charters: the Serbian term *milosnik* (МИЛОСТЪНИКЪ) was translated as *executor* (*executor sentencie domini regis*).

An analysis of sources shows that among the executors (*milosniks*) were the following court dignitaries: *logothets*, *protovestiars*, *čelniks*, *kephales*, sometimes *župans* and *dukes*, and even the monarch’s son (Crown Prince).¹⁸¹

2.6 1402–1459

Exposed to permanent Ottoman pressure, Despot Stefan Lazarević endeavoured to strengthen a complete system of State defence. In order to accomplish this, he transferred authority over local administration to the dukes (*vojvode*), who were put in charge of all military and civilian affairs in a respective town and surrounding. The military affairs acquired greater importance over civilian ones, not only in towns but also in rural settlements. Each stronger fortress, together with the surrounding rural settlements, became the centre of the *region* (*vlasti*). At its head was a duke. Such structure of local administration limited the position of *kephales*. *Kephales*, however, remained important in several smaller mining centres, while those larger ones, such as Novo Brdo and Srebrenica were put in the charge of dukes.

¹⁸¹ For more details on *milost* and *milosnik*, see Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 59–166.

The militarizing of the complete State administration became obvious in all its manifestations. Within the central administration the most prominent position belonged to the “great duke” (*veliki vojvoda*), while at the local level it was the “duke of the town” (*gradski vojvoda*). In the larger townships the dukes acquired their title through purchase. It was more-or-less the same with the *regions* (*vlasti*). After the expiration of a certain period these dignitaries would lose their position and the title of the duke. The acquisition of the dignity of a duke of a town or a fortress, or region (*vlasti*), was attractive because of the income that position secured.

During the reign of Despot Stefan Lazarević, Byzantine influence concerning its titles slowly disappeared, while Hungarian penetrated. The Despot’s *veliki čelnik* (great čelnik) administrated similar duties as did the *comes palatinus* at the Hungarian court.¹⁸²

3 Councils (*državni sabori*, *сѣборъ*, *зборъ*)

3.1 Name

Serbian sources confirm that in mediaeval Serbia there existed representative assemblies of the most powerful lords, worldly and ecclesiastical, usually called “Councils” (*sabori*, *сѣбори*, singular = *sabor*, *сѣборъ*, sometimes *zbor*, *зборъ*). However, in the Serbian texts the term *sabor* is used in three different meanings: 1) the assembly of Church representatives (Church Councils, *Crkveni sabori*); 2) the assembly of State dignitaries (State Councils, *Državni sabori*); and 3) any other meeting (for example article 69 of Dušan’s Law Code mentions “commoners’ councils” for the rebellious assembling of commoners). The most frequent usage in the sources of the term *sabor* (*сѣборъ*) is for the State Councils, which were held in the presence of the monarch and the most powerful lords. Besides the monarch, these Councils were the most important governmental body in mediaeval Serbia.¹⁸³ However, the sources do not call these kinds of council “State Councils” (*Državni sabori*); rather terms such as “Serbian Coun-

182 On State administration in that time see M. Dinić, “Vlasti za vreme Despotovine” [“Regions during the Despot’s State”], *ZFFB* 10.1 (1968), pp. 237–244; A. Veselinović, *Država srpskih despota* [The State of the Serbian Despots] (Belgrade 2006), pp. 205–213, 243–250; and Blagojević, *Državna uprava u srpskim srednjovekovnim zemljama*, pp. 266–297.

183 In modern Serbian, the word *sabor* is used for any kind of assembling, while the Serbian parliament is called *skupština* (assembly). Both terms have the same meaning, derived from verbs *sabrati se* and *skupiti se*, meaning “to gather, to assemble”. Croats use the word *sabor* to designate their parliament (assembly).

cil" (*Sabor srpski*), "All Serbian Council" (*Sav Sabor srpski*) and "Council of All the Serbian Lands" (*Sav Sabor Zemlje Srpske*) are used.

3.2 *The Most Important Councils*

According to the research of Nikola Radojčić, author of the most complete study on Serbian State Councils,¹⁸⁴ in the period from the end of the 12th century to 1459, 37 Councils were held in Serbia. Out of that number it is not possible to say whether 8 of them were actually held or not. We are going to mention several Councils that we consider to be the most important.

According to the testimony of Stefan Nemanjić and Saint Sabba, sons and biographers of Stefan Nemanja, during the reign of their father two Councils were held. The first of them was convoked because of the Bogomilian heresy. Stefan the First Crowned wrote that his father "as soon as he knew that odious and damned heresy took roots in his State, called without hesitation his Archiereus Jephthimios and monks with their superiors, and honourable priests, and his lords, great and small" (Си же прѣподобныи светыи мои господинъ ни мали зак'снѣвъ, скоро призвавъ своего арх'iereя и евъ'диміи глаголема и чрън'це съ игоумени своими и чьстьныи еiereи, стар'це же и вел'моу же свои втъ мала и до велика ихъ).¹⁸⁵ In the second Council it was decided who would be Nemanja's successor on the throne. According to the story of Saint Sabba, Nemanja

gathered his noble children and all his chosen boyars, great and small ... and he elected his noble and beloved son Stefan Nemanja, the son in law of crowned Greek Emperor Kyr Alexios, and he gave him to them, saying:

184 Radojčić, *Srpski državni sabori u srednjem veku*. On Councils, see also Taranovski, *Istorija*, vol. I, pp. 167–197, and Nedeljković, "O saborima i zakonodavnoj delatnosti u Srbiji". Cf. M. Dinić, *Državni sabor srednjovekovne Bosne* [State Council of Mediaeval Bosnia] (Belgrade 1955) and V. Đurić, "Istorijske kompozicije u srpskom slikarstvu srednjega veka" ["Historical Composition in Serbian Mediaeval Painting"], *ZRVI* 10 (1967), pp. 131–148. Concise information on Councils can be found in H.M. Cam, A. Marongiu, and G. Stökl, "Recent Work and Present Views on the Origins and Development of Representative Assemblies", in *X Congresso internazionale di scienze storiche, Roma, 4–11 settembre, Relazioni I* (Florence 1955), pp. 86–92, and S. Ćirković, "S'bor. Zur Geschichte der Standesversammlungen bei den Südslaven", in *Osteuropa in Geschichte und Gegenwart. Festschrift für Günter Stökl zum 60. Geburtstag*, ed. H. Lemberg, P. Nitsche, and E. Oberländer (Cologne–Vienna 1977), pp. 58–64.

185 Edited by Ćorović, *Spisi Svetog Save*, p. 82; edited by Jovanović, *Sveti Sava, Sabrana dela*, p. 32.

“Let you have this one instead of me, a good root that came out from my entrails. And I am installing him on the throne of the realm given to me by Christ”.

И ТАКО ПОСЛАВЪ СЪВЪЗКОУПИ БЛАГОРОДНѢЮ СИ ДѢТ'ЦОУ И ВЪСЕ ИЗБРАННЫЕ СИ БУЛАРЕ МАЛЫЕ И ВЕЛИКЫЕ ... БОЖІЮ ЖЕ ИЗВОЛЕНІЮ БЫВШЪ, ИЗБРА БЛАГОРОДНАГО И ЛЮБИМАГО СЫНА СТЕФАНА НЕМАНЮ УТЪ БОГА ВѢНЧАНАО ЗѢТИ КЇР АЛЕКСѢА ЦАРА ГРЪЧЪСКАГО СЕГО ПРѢДАСТЬ ИМЪ ГЛАГОЛЕ СЕГО ИМѢТЕ Ѹ МЕНЕ МѢСТО, КОРѢНЬ БЛАГЫ ИЗЪШЕДЪ ИЗЪ ОУТРОБЫ МОЕЕ И СЕГО ПОСАЖДАЮ НА ПРѢСТОЛѢ ОУ ХРИСТОВѢ ДАРОВАНОМОУ МИ ВЛАДЫЧЕСТВѢ.¹⁸⁶

The coronation of King Stefan was done in the monastery of Žiža. As Theodosios says in his *Life of Saint Sabba*, the King invited on that occasion “dignitaries¹⁸⁷ and dukes, great and small župans” (ипаты же и воєводы, мнозы же и жоупаны мали же и велици). From the other side the Archbishop invited his bishops (*episkope*), monastery superiors (*igumane*) and all other Church dignitaries.¹⁸⁸ According to the same source, during the reign of King Vladislav (1234–1243), Archbishop Sava Nemanjić (Saint Sabba) convoked the Council and invited King Vladislav and his great lords (призвавъ же ... Владислава крала и благородныхъ его великихъ).¹⁸⁹ The Council designated Arsenios as Sabba's successor on the archiepiscopal throne.

According to the testimony of Archbishop Danilo II, King Dragutin (c.1279) chose the new Archbishop together with the by-God-given Council of his fatherland, Serbian Land, with bishops and monastery superiors and with his orthodox boyars (сътвори възискание съ богодарованнымъ кемоу съборомъ отъчествина кего, земле сръбьскыне, епископы же и игоумены и правобѣрными кего боляры).¹⁹⁰ The same King abdicated from the throne in favour of his younger brother Milutin at a Council in Dežavo (1282).¹⁹¹ Speaking at the Council where Archbishop Nikodim (during the reign of King Milutin) was elected, Archbishop Danilo II says that the Council could elect the new bishop, not once

186 Edited by Ćorović, *Spisi Svetog Save*, pp. 155 and 157; edited by Jovanović, *Sveti Sava, Sabrana dela*, pp. 154 and 158.

187 The Serbian text used the word *ipat* (ипать), from Greek ὑπάτος = the highest. The same Greek word was used for Roman consuls.

188 Edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, pp. 140–143.

189 Ibid., p. 180. The story presented by Domentian is different: the King has invited ecclesiastical and worldly lords as well (ibid., p. 296).

190 Ibid., p. 308.

191 Ibid., pp. 25–27.

but three times and for many years (изискоује таковааго моужа не јединою нь и тришты, и за все годиште).¹⁹² The words of the hagiographer are clear testimony that all issues discussed on Councils were not always solved according to the monarch's will.

Besides narative sources, information on Councils can be found in legal documents too. For example, in the Dečani charter (1330) we read how King Stefan Dečanski convoked the Council where the monastery chrysobull was presented. It is said:

For that reason, I the sinful and unworthy slave of Christ, Stefan Uroš the Third, by the mercy of God designated as King of all Serbian and Maritime Lands, and with my royal, God-given son Stefan, gathered the Council of Serbian Land: Archbishop Danilo and bishops and monastery superiors and tax collectors and land officials and dukes and servants, and I arranged with them.

сего ради и азъ грѣш'ни и недостоинни рабъ Христоу Стефанъ Оурош третии Богомъ помилованы и Богомъ просвѣштении и поставлени краљъ в'сѣхъ сръб'скихъ и помор'скихъ земель и съ Богомъ дарован'нымъ синомъ краљев'ства ми Стефаномъ. събрав'ша з'боръ сръб'ские земље арх'иепископа Данила и епископы и игоумени и казньце и теп'чине и воеводы и слоугы и ставил'це и з'говорих' се с нимии.¹⁹³

Stefan Dušan was crowned in 1331 as King at the "Council of Serbian Land in his imperial palace in Svrčin" (и всемоу събору събраноу земље сръбьские въ царьцѣмъ дворѣ юго Сврчинѣ) and as Tsar in 1346 at the Serbian Council in Skoplje (царь Стефанъ вѣнча се на царство ... и съ съборомъ сръбьскимъ).¹⁹⁴ The most important Council was probably the one held on 21 May 1349 when the first part of Dušan's Law Code was promulgated. In the introduction to the Code it is stated clearly who were the participants of the Council: "This Code is established by our Orthodox Council, by the Most Holy Patriarch Kyr Joanik and by all the archpriests and clergy, both small and great, and by me, true-believing Tsar Stephan, and all the lords of my Empire, both small and great" (Сїи же законыкъ поставляемъ отъ православнаго събора нашего, прѣтвѣще-

192 Ibid., p. 152.

193 Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 137.

194 Archbishop Danilo II, edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, pp. 218 and 380.

НЫМЪ ПАТРІАРХУМЪ КУРЬ ІВАНІКІЕМЪ, И ВЪСѢМЪ ДР'ХІТЕРИ И ЦРЬКОВНИКЫ МАЛИМЫ И ВЕЛИКЫМИ, И МНОЮ БЛАГОВѢРНЫМЪ ЦАРЕМЪ СТЕФАНУМЪ, И ВЪСѢМІИ ВЛАСТЕЛИ ЦАРСТВА МИ, МАЛИМИ ЖЕ И ВЕЛИКЫМИ).¹⁹⁵

Tsar Uroš gave the island of Mljet (today in Croatia) to the noblemen of Kotor Bivoličić and Bučić at a Council as well. In the presented charter from 10 April 1357, we can read: "I arranged with the lady and my Imperial mother, the Orthodox Tsarina Kyra Helena, and with my lord and father the Most Holy Patriarch Kyr Sabba, and with all metropolitans, monastery superiors, and all my Imperial mighty lords, and with all Serbian Council" (зговорив се съ господѣмъ и матерію царьства ми, благовѣрною царицею куря Еленою и съ господиномъ и вѣтцемъ прѣвѣщеннымъ патриархомъ курь Савомъ и съ вѣсѣми митрополити, игѣмени и съ вѣсѣми властели велевѣзможными подъ рѣскою царьства ми и съ вѣсѣмъ зборѣмъ сръбьскимъ).¹⁹⁶

After the disappearance of Nemanjić's dynasty, Councils were rare. During the reign of Prince Lazar a Council of 1374 was mentioned. At that Council it was announced to "the old Tsarina Elizabeth¹⁹⁷ and to all noblemen" (и събору всѣмоу оповѣдають, старои царици кирь Елисавети и всѣмъ соуштинимъ властеломъ) that a Serbian delegation would travel to Constantinople to try to reconcile the Serbian and Byzantine Churches.¹⁹⁸ The most important Council during the reign of Despot Stefan Lazarević was held in Srebrnica (today Srebrenica, in Bosnia), when the Despot's nephew Đurađ Branković was designated as his successor. Regarding that event we have a story written by the Despot's biographer Constantine the Philosopher:

The honourable Despot Stefan was more and more suffering from a leg illness. Afraid of death, he sent for his nephew lord Đurađ, and this one came to the place called Srebrnica, and there [the Despot] gathered with the Patriarch a Council of honourable priests and nobles of all authorities and all selected, and blessed him [Đurađ] on the Council as a lord, saying: "Let him be treated as lord instead of me".

Благочыстивааго же деспота Стефана постиже множан болестъ ножыная, иеюже изъ давына страждааше. Тѣмъ же и множане смърти оубоавъ се

195 Burr, "The Code of Stephan Dušan", p. 198; Novaković, *Zakonik*, p. 6; *Zakonik cara Stefana Dušana*, vol. III, p. 98.

196 Edited by Mihaljčić, *SSA* 3 (2004), p. 73.

197 Elizabeth (Jelisaveta) was the monastic name of Empress Helen (Jelena), Tsar Dušan's widow.

198 Archbishop Danilo II, edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, p. 382.

посылають по нетиѣ своего господина Гюрьга и приходитъ съ въ мѣстѣ нарицаемѣмъ Сребрьница и тоу събирають съ патриархѡмъ съборъ чсть—ныихъ архiereи и благородныхъ всѣхъ властен же и всѣхъ избранныхъ благословляють того съборомъ на господство глаголюе' отъ нынѣ сего познайте господина въ мѣсто мене.¹⁹⁹

3.3 *Participants, Functions, Importance*

Information given by the sources opens several questions: 1) who were the participants at the Council's sessions; 2) what was the competence of the Councils; 3) were the Councils convoked on regular basis or only according to need; and 4) to what extent did the Councils limit the sovereign?

In listing the participants of Councils' sessions, the sources do not give an unvarying formula. An analysis of the texts allows us to conclude that the participants were as follows: always monarch; sometimes his wife and Crown Prince; the highest Church dignitaries—Patriarch (from 1345), Archbishop (from 1219), metropolitans, bishops, monastery superiors (*igumani*) and monks; great and small lords, but not the lesser lords (*vlasteličići*). Some scholars think that even the court dignitaries were present at the Council's session, but such an opinion cannot be proved by the sources. It is most probable that the Council's composition was not precisely fixed and that it was dependent on a mixture of tradition and the monarch's will.

Even the Councils' competence was not precisely determined, so it is very difficult to say whether the Councils had legislative, executive or judiciary power, from a modern point of view. According to the information given by the sources we can conclude which questions were more often discussed and which were discussed only exceptionally. The sources testify that four monastery charters (Saint Stephen monastery in Banjska, monastery of Dečani, monastery of Saint Archangels Michael and Gabriel and Lesnovo monastery) and one nobleman's (to lesser lord Ivanko Probištitović) were presented at Councils, but at the same time the sources confirm that the monarch promulgated charters without the presence of Councils. Changes on the throne were referred to at Councils, but there is no information if the Councils elected the monarch or not. The Crown Prince was designated by the monarch (not always according to the right of primogeniture), or sometimes changes on the throne were done by force, whilst the Council would confirm the new sovereign. The competence of the Council was to elect and confirm the new Archbishop and Patriarch, but the Councils did not discuss ecclesiastical matters. An excep-

199 Edited by Jagić, p. 326.

tion could be Nemanja's Council, convoked because of the Bogomilian heresy, but the Bogomilian problem was not strictly an ecclesiastical matter. The first part of Dušan's Law Code was issued at a Council as well. We do not know whether the same thing happened with the *Syntagma* of Matheas Blastares, the so-called "*Justinian's Law*", or the second part of the Code, but it is probable that they were too. In Tsar Dušan's charter of 2 May 1355, giving some villages to the monastery of Hilandar, we find that the Council held in Krupišta (Крупишта) discussed a judicial trial.²⁰⁰ Of course, that isolated incident cannot be proof that Councils had judicial competence. According to the testimony of Archbishop Danilo II, of the Council convoked in 1330, after the battle of Velbužd, questions of war and peace were discussed.²⁰¹

Councils were not convoked regularly, on exactly fixed days and seasons, but according to a need, dictated by circumstances.

What was the character of the Councils? In the 19th century, Vladimir Jovanović, an ideologist of Serbian liberals, asserted that Councils were popular representative bodies, some kind of popular assemblies or modern parliaments.²⁰² Such a point of view could be understood, as we know that the 19th century was an epoch of struggles against the autocracy of Serbian Princes from the Obrenović dynasty and at the same time for the rights of popular assembly (parliament).²⁰³ Naturally, modern scholars have refuted Jovanović's arguments, but it still remained very difficult to define precisely the character of the Councils. Certainly, they are very similar to the mediaeval English parliament or *États généraux* in France, but the townsmen did not participate at Serbian mediaeval Councils as they did not represent an autonomous class (*tiers état*). Nevertheless, the Councils succeeded in great measure in limiting the power of the monarch. The formula "I the King (or Tsar) arranged with ..." (зговори се краљевство от царство ми съ ...) is used very often in the sources, showing that the monarch tried very hard to harmonize his will with that of the noblemen. Though the sources do not preserve the information on actual debates held at Councils, we can conclude indirectly that questions were not always accepted unanimously and without any resistance.

200 Novaković, *Zakonski spomenici*, pp. 429–430; Koprivica, "Povelja cara Stefana Dušana Hilandaru za Zabele Ponorac i Kruščicu i trg Kninac".

201 Archbishop Danilo II, edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, pp. 187–189.

202 V. Jovanović, *Za slobodu i narod* [For Liberty and People] (Novi Sad 1868), p. 100, and *Osnovi snage i veličine srbske* [Basis of Serbian Strength and Greatness] (Novi Sad 1870), p. 41.

203 See D. Popović, *Constitutional History of Serbia* (Paderborn 2021), pp. 3–75.

3.4 *Privy Council?*

Some information given by Serbian and Byzantine narrative sources suggests that in mediaeval Serbia there existed some kind of Privy Council, the principal council of the sovereign, composed of the most powerful lords and court dignitaries. We shall quote several examples.

In the *Life of Saint Sabba*, written by Theodosios, the author says that Sabba was going to negotiate with the renegade Strez, who was refusing to recognize the power of his brother King Stefan. When Sabba came back "he invited to his sovereign brother all his principal dukes" (И БОГОМОУДРІИ ЖЕ САВА КЪ САМОДРЪЖЦОУ БРАТОУ ВСЕ НАЧЕЛНЫЕ ЕГО ВОЕВОДЫ ПРИЗВАВЪ).²⁰⁴ Archbishop Danilo II mentions the "Imperial Synklitos" (и царьскому синьклитоу)²⁰⁵ who participated in Queen Helen's funeral, besides the King, noblemen and people.²⁰⁶ When King Milutin decided to deprive his son Stefan Dečanski of sight, he consulted with his mighty lords (съ многими вельможи своими съвѣштавъ се).²⁰⁷ After having captured his father Stefan Dečanski, young King Dušan conferred with his lords what to do further (сынъ его съвѣштаніе сътвори съ соуштиними его властели).²⁰⁸ During negotiations with the Byzantine Emperor Andronikos III Palaiologos, King Dušan consulted with "the mighty lords of his fatherland" (съвѣштаніе сътвори съ сильными отъвѣсткима си).²⁰⁹ When the Hungarians attacked Serbia, Dušan ordered that all soldiers from his State were to be gathered and then he would consult with his mighty lords (и великоименитыи свои вельможе призвавъ, и съвѣштаніе съ тѣми сътвори).²¹⁰

Theodore Metochites writes that for successful negotiations with Serbs, oaths are needed from the King (ρηγός), Queen-mother (μητὸς ρηγαινής) and their governors and the powerful persons from the country (καὶ τῶν κατὰ χώραν σφίσιν ἐπιτηδείων τε καὶ μεγίστων ἀνδρῶν). He says that King Milutin chose three or four persons, among his distinguished (τῶν ... ἐκκρίτων) noblemen to join the conversation with him (Metochites) and ordered them to be treated like himself (King Milutin).²¹¹

The most precise is John Cantakuzenos who wrote that during negotiations with King Dušan (July 1342), John met in Serbia a council (βουλή, ἐκκλησία),

204 Edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, p. 113.

205 Greek σύγκλητος = senate, the term which was used for the Senate from Constantinople.

206 Archbishop Danilo II, edited by Daničić, *Životi kraljeva i arhiepiskopa srpskih*, p. 93.

207 Ibid., p. 126.

208 Ibid., p. 213.

209 Ibid., p. 224.

210 Ibid., p. 228.

211 Ed. Mavromatis, pp. 105, 106; *VITINJ*, vol. VI, pp. 114 and 118. Cf. note 75 (comment by I. Đurić).

composed of 24 dukes and mighty lords (τοὺς ἐν τέλει καὶ μεγάλα δυναμένους).²¹² Is this direct proof that in Serbia there existed a King's Privy Council composed of 24 members?²¹³ It is hard to say, because no legal document gives evidence of the existence of such a governmental body. However, it is very probable that Serbian monarchs, in different circumstances, convoked, beside State Councils, some kind of Privy Council, composed of the most powerful lords. It remains unknown how many members such a council had, whether it was regularly convoked or not, and what kind of competencies it had.²¹⁴

4 Local Administration

During the reign of Nemanjić's dynasty in mediaeval Serbia there existed bigger or smaller territories that were conferred to members of the monarch's family or to noblemen for administration. These were Zeta (Зета, Ζέντα, modern Montenegro), Zahumlje (Захумље, Ζαχλοῦμοι, modern Herzegovina), areas (областу, *oblasti*), so-called "Greek Lands", counties (жупе, *župe*), frontier areas (крајушина, *krajišta*) and so-called "države" (holdings, estates). In the 15th century, during the reign of Despot Stefan Lazarević, we find new administrative areas called "vlasti" (regions).

4.1 Zeta and Zahumlje

After 1180 the region of Zeta (modern Montenegro) with the towns of Skadar (modern Shkodër in Albania), Bar, Ulcinj, Budva and Kotor became a part of the Serbian mediaeval State. Stefan Nemanja, the founder of the dynasty, gave Zeta for administration to his eldest son Vukan, who took the title of King. The same title was carried very proudly by Vukan's son Đorđe (George). After his death Vukan's descendants were not mentioned any more as the rulers of Zeta; usually, the region was conferred on the Crown Prince (as with Wales in Britain) or to some other prominent member of the monarch's family. Though some historians have considered that Zeta had some special, privileged position within the Serbian State, the research of Ivan Božić has shown that, according to information given by the sources, we cannot say what kind of privileges Zeta had.²¹⁵

²¹² Bonnae II, pp. 266, 269; *VIINJ*, vol. VI, p. 395.

²¹³ See the comment by B. Ferjančić, in *VIINJ*, vol. VI, p. 395, n. 118 a.

²¹⁴ See also S. Šarkiċ, "Organisation du pouvoir en Serbie médiévale", *Études Balcaniques, Cahiers Pierre Belon* 19–20 (2013–2014), pp. 65–87.

²¹⁵ I. Božić, "O položaju Zete u državi Nemanjića" ["On the Position of Zeta in Nemanjić's State"], *IG* 1–2 (1950), pp. 97–122.

During the reign of Stefan Nemanja, Zahumlje or Hum (modern Hercegovina) was governed by Nemanja's brother Miroslav, whose co-signature can be found on the first treaty with Dubrovnik (see Chapter 2, section 3). By Miroslav's order (c.1185) the famous Evangeliary (so-called "Miroslavljevo Jevandjelje") was copied.²¹⁶ After Miroslav, Nemanja's youngest son Rastko governed Zahumlje untill 1191, when he left the secular life and became the monk Sabba (Sava). Around 1214–1235 and 1247–1249, the Great Prince of Hum Andrej (Andrew) concluded two treaties with Dubrovnik,²¹⁷ but even those documents do not allow the conclusion that Zahumlje had some privileged position.²¹⁸

4.2 Areas (oblasti, области)

During the reign of Tsar Dušan, there existed different areas conferred in administration to the most powerful lords. After Tsar Dušan's death (during the reign of his son Uroš) these mighty lords or their descendants became practically independent rulers in their areas. It has already been mentioned that Dušan's half-brother Simon (Siniša) proclaimed himself Emperor and ruler of Epiros. Later on he expended his "Empire" with the region of Thessaly.²¹⁹ In Macedonia (North Macedonia) Vukašin Mrnjavčević called himself the King and signed his documents as "the lord of Serbian and Greek and Maritime Land and of Occidental parts and of all Dys" (и постави ме господина всемѣ стезанию, рѣкѣ же земли Срѣбскои и всемѣ Гръкомѣ и Поморию и странамъ Западнимъ и всемѣ Дикѣ).²²⁰ From 1366, three brothers Balšić became completely independent in Zeta, and they concluded treaties with Dubrovnik and the Republic of Venice and issued monastery charters.²²¹ The northwest of Serbia was governed by the

216 The most important works on "Miroslav's Evangeliary" are: S. Kuljbakin, *Paleografska i jezička ispitivanja o Miroslavljevom jevandelju* [Palaeographic and Linguistic Examinations on Miroslav's Evangeliary] (Sremski Karlovci 1925); L. Mirković, *Miroslavljevo jevandjelje* [Miroslav's Evangeliary] (Belgrade 1950); J. Vrana, *L'Évangélique de Miroslav. Contribution à l'étude de son origine* (The Hague 1961). Photoprint of the text by Lj. Stojanović, *Miroslavljevo jevandjelje* [Miroslav's Evangeliary] (Vienna 1897). See also *ISN*, vol. 1, pp. 293–295, and n. 40.

217 Novaković, *Zakonski spomenici*, pp. 143–144; Mošin, Ćirković, and Sindik, *Zbornik*, pp. 131–132, 185–186; Ravić, *SSA* 12 (2013), pp. 9–19.

218 On Zahumlje (Hum), see the recent work by S. Mišić, *Humaska zemlja u Srednjem veku* [The Land of Hum in the Middle Ages] (Belgrade 1996).

219 On Simon's rule in Thessaly see Ferjančić, *Tesalija u XIII i XIV veku*, pp. 241–265.

220 Charter to his nobleman Novak Mrasorović, edited by Ćirković, *SSA* 1 (2002), p. 100.

221 Stojanović, *Stare srpske povelje i pisma*, vol. 1, pp. 104–105, 106, 106–107, 109, 109–110, 110–111; Novaković, *Zakonski spomenici*, pp. 270, 289–290, 582–583, 583–584, 584–585, 754, 757, 778–781; *SSA* 5 (2006), pp. 207–227; *SSA* 8 (2009), pp. 101–110, 111–117; *SSA* 9 (2010), pp. 93–98; *SSA* 10 (2011), pp. 103–107; *SSA* 11 (2012), pp. 101–106; *SSA* 15 (2016), pp. 143–155.

Župan Nikola Altomanović, and the region of Kruševac (in the central part of the country) by Prince Lazar.²²² The area of Serres (in Greece) was governed first by Dušan's widow, Empress Helen (Jelena), and from 1365 by Despot John (Jovan) Uglješa.²²³ Later on the number of independent lords increased until 1389, when the majority of them had to recognize the supreme power of the Turkish Sultan.²²⁴

4.3 "Serbian Lands" and "Greek Lands"

During the reign of King Milutin, the sources already marked a difference between "Serbian Lands", that is the core of Nemanjić's State, and "Greek Lands", with reference to the territories conquered from Byzantium. That division became more significant in the times of Tsar Dušan. According to the story of Byzantine writer Nikephoros Gregoras, after proclaiming himself Emperor (Tsar), Dušan

divided with his son [Uroš] the whole territory of the State: he gave to him [to his son Uroš] to govern [the territory] from the Ionian Gulf²²⁵ and the River Danube to the town of Skoplje, according to the Tribalic²²⁶ customs ... He [took] for himself, according to the Roman way of life, Roman [Byzantine, Greek] lands and towns, from there [that is from Skoplje] to the passage near the Christoupolis.²²⁷

ἦδη δὲ καὶ πρὸς τὸν υἱὸν τὴν ὅλην ἡγεμονίαν ἐνειματο· καὶ τῷ μὲν ἄρχειν παρέσχε, κατὰ τὰ εἰθισμένα τοῖς Τριβαλλοῖς, τῆς ἐκ τε κόλπου τοῦ Ἰονίου καὶ αὐτοῦ Ἰστρου τοῦ ποταμοῦ μέχρι τῆς τῷ Σκοπίων πολέως ... Ἐαυτῷ δ' αὐτῶν ἐκείθεν Ῥωμαϊκῶν χωρῶν καὶ πόλεων κατὰ τὴν εἰθισμένην Ῥωμαίοις δίαίταν, ἄχρι καὶ εἰς τὰ περὶ Χριστούπολιν τῶν παρόδων στενά.²²⁸

222 See R. Mihaljčić, *Kraj Srpskog Carstva* [The End of the Serbian Empire] (Belgrade 1975) = *Complete Works, Book I* (Belgrade 2001).

223 On the Serres area after Dušan's death, see Ostrogorski, *Serska oblast posle Dušanove smrti*.

224 See R. Mihaljčić, "Doba oblasnih gospodara" ["Epoch of Local Lords"], in *ISN*, vol. 11 (Belgrade 1982), pp. 21–36.

225 The Ionian Gulf is the Adriatic Sea.

226 Tribaloi were a Thracian tribe, living in the Balkan Peninsula in the 5th and 4th centuries B.C. Byzantine writers often used the name Tribaloi for Serbs. For more details on Tribaloi, see F. Papazoglu, *Srednjobalkanska plemena u predrimsko doba* [The Tribes from the Middle Balkans in the Pre-Roman Period] (Sarajevo 1969), pp. 11–68.

227 Christoupolis is modern Kavala in Greece.

228 Nic. Gregorae, *Byzantina Historia*, xv, 1, Bonnæ 11, p. 747, lines 5–12. Cf. *VIIINJ*, vol. VI, p. 270.

Besides the testimony of Nikephoros Gregoras there are another three documents that are usually quoted as evidence of a real division of the State territory between “Serbian Lands” and “Greek Lands”. The first of them is Tsar Dušan’s charter to the monastery of Hilandar (1348). Confirming his gifts to the monastery, the Tsar says that he “established and wrote the names of all monastery manors in Serbian and Roman Land” (И сико оузаконившѣ испи-сасмо имена метохѣиамъ вѣтъмъ по Срѣбляехъ и по Романѣи). Further on in the text are quoted 38 villages in “Serbian Land” (Сѣла по земли срѣбьскои) and a separate 24 villages in “Greek Land” “with all their borders and rights” (И земліа гречечиска и съ сазѣ сѣла съ междами и съ правинама си).²²⁹ The second document is the treaty with Dubrovnik (20 September 1349), which mentions the “Tsar’s and King’s land” (по земл’и царѣства ми и кралѣвѣтъ), the “Tsar’s and King’s market-places” (по тръговехъ царѣства ми и кралѣвехъ) and the “Tsar’s and King’s noblemen” (ни властѣлинь царѣства ми, ни кралѣвъ властѣлинь).²³⁰ The third document is Tsar Dušan’s chrysobull giving some estates and Saint Nicholas church under Kožalj to Jacob (James), metropolitan of Serres. As the chrysobull contains a short confirming charter by King (Crown Prince) Uroš, the document has been considered further proof of the existence of a State division.²³¹

It is evident that the information given by Nikephoros Gregoras cannot be disputed. However, does it reflect reality? Did two separate administrative parts of the country, one governed by Tsar Dušan according to Byzantine laws and another governed by King (Crown Prince) Uroš according to Serbian laws (customs), exist in Serbia? On that point opinions are divided.

Some historians, starting with Constantine Jireček, accepted the information of Nikephoros Gregoras and believed that the territory of the State was really divided into two administrative parts.²³² The other group of scholars

229 Edited by Mišić and Koprivica, *SSA* 14 (2015), pp. 69–70.

230 Edited by Ječmenica, *SSA* 11 (2012), pp. 38–40.

231 Edited by Bojković, *SSA* 15 (2016), p. 96.

232 Jireček, *Istorija Srba*, vol. I, p. 222, n. 45; A. Solovjev, “Grečeskie arhonti v serbskom carstve XIV veka” [“Greek Archons in the Serbian Empire of the 14th Century”], *Byzantinoslavica* 2 (1930), p. 275; Taranovski, *Istorija*, vol. I, pp. 166 and 242; Solovjev and Mošin, *Diplomata graeca*, pp. VII–IX; Ivković, “Ustanova ‘mladog kralja’ u srednjovekovnoj Srbiji”, pp. 70 and 77; T. Tomoski, “Skopje od XI do XIV vek” [“Skopje from the 11th to the 14th Centuries”], in *Spomenici za srednovekovnata i ponovata istorija na Makedonija I* (Skopje 1975), p. 62; L. Slaveva, “Diplomatičko-pravnite spomenici za istorijata na Polog i sosednite krajevi v XIV vek” [“Diplomatic and Legal Documents for the History of Polog and Neighbouring Regions in the 14th Century”], in Slaveva, Miljković-Pepel, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, pp. 107–111.

thought that the division was formal and theoretic: Tsar Dušan was the real master of the State, because his son Uroš in that moment was only nine years old.²³³ However, according to the research of Ljubomir Maksimović,²³⁴ the Serbian Empire was not divided into two administrative parts; it remained unique under the reign of Tsar Dušan and no Serbian legal document gives proof of continuing division.²³⁵

4.4 Counties (župe, Жопе)

Prior to the 12th century, the term *župa* (жупа, in Latin documents *çopa*, *ioba*, *supa*, *iuppa*, *xupa*, *gyuppa*, *çuppa*) designated the settlement of a tribe, usually well protected and hidden by nature.²³⁶ Later on, the counties (*župe*) became governmental districts composed of several villages or towns with a nobleman at its head, who ruled over them in the name of the monarch. In the Serbian legal sources, *župa* is mentioned for the first time in the Great Župan Stefan's treaty with Dubrovnik (1205). It provides for the collective responsibility of the

233 Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 71–73; M. Dinić, *Istorija naroda Jugoslavije* [History of Yugoslav People], vol. 1 (Belgrade 1953), p. 359, and “La division de l’État serbe sous l’empereur Stefan Dušan en ‘pays serbe’ et en ‘Romanie’”, *IG* 1–2 (1995), pp. 7–12; G. Soulis, *The Serbs and Byzantium during the Reign of Tsar Stephen Dušan (1331–1355) and his Successors* (Washington D.C. 1984), pp. 78–80.

234 Maksimović, “Poreski sistem u grčkim oblastima Srpskog Carstva”, pp. 101–106.

235 The author was examining all three documents that are usually quoted as evidence for the existence of a division. He concluded the following: 1) charter to the monastery of Hilandar from 1348 says that all villages in the whole Empire would be exempt from all services, great or small (И снѣзи села и метохѣ ѡсвободи царство ми ѡтъ всѣхъ работъ, иже се ѡбрътаю малѣ и велике по земли царства ми; *SSA* 14, p. 71). It is evident that the quoted provision refers to all villages, either in “Greek Lands” or in “Serbian Lands”, and that is the proof that the unique administrative system existed in Serbia (p. 105). 2) The treaty with Dubrovnik (1349) says that trespasses against Ragusans, either in the Tsar’s or in the King’s land will be judged by the Imperial court. The Ragusans, either in the Tsar’s or in the King’s market-places would be responsible to the Tsar’s court. 3) Tsar Dušan gave the charter to the Metropolitan of Serres in the name of the whole family. For this reason, we find the signature of Crown Prince Uroš at the end of the charter (we find the signature of Tsarina Helen as well), but this is not evidence that King Uroš governed over his own part of the State (p. 106). Besides, the author remarks that in Tsar Dušan’s signatures Serbia and Serbs are first mentioned and after that Romania and Greeks, which is proof that Crown Prince Uroš could not rule over the “Serbian Lands” (p. 104). And finally, Dušan’s Law Code was promulgated for the entire territory of the State, insisting on State unity (*ibid.*). Cf. *VIIINJ*, vol. VI, p. 271, note 126 (B. Ferjančić).

236 On the origin and different meanings of the word *župa* see G. Tomović, “Župa”, in *LSSV*, pp. 195–197, with a list of references for further reading.

inhabitants of the counties in cases where Ragusan merchants were plundered (Оу коиѣ ли се жоупѣ што испакости, тазѣ жоупа вола да да кривыце вола да плати).²³⁷

Several articles of Dušan's Law Code regulate the legal position of counties. According to article 134, the county could be given to a nobleman as a hereditary estate: "When the Tsar grants a hereditary estate, let him to whom a village is given ... but to whom a county is given ..." (И цю записѣ царь бацине, комѣ запише село ... а комѣ жѣпѣ ...).²³⁸ However, the counties had some kinds of collective property, such as common pasture (art. 75). Dušan's Law Code prescribes a long series of the county's collective duties: building and rebuilding of towns (art. 127); guarding of roads (art. 157); transport of the Tsar (art. 60). The county also had a collective responsibility to pay for damage caused by robbery or theft (art. 126 and 191) or by fire (art. 58) and for when villagers plundered the home of a nobleman who was abroad (art. 144). There were so-called *smesne župe* (жоупѣ смесне = mixed counties) with no lords over the whole county. Such counties were governed by *kephales* (on their task see above; cf. article 157 of the Code).

4.5 *Frontier Areas (krajista, краица)*

Krajista (frontier areas) were the frontier counties established for the purpose of defence. The word comes from *kraj* meaning "end", "termination", "close", "finish", "completion" or "limit".²³⁹ The frontier areas (*krajista*) were governed by *vlastela-krajišnici* (lords of the marches, *markgrafen*, *marchiones*, margraves) with special rights and responsibilities, as was common throughout mediaeval Europe.²⁴⁰ The duties of marcher lords were fixed in two articles of Dušan's Law Code. Article 49 says: "If any foreign army come and ravish the land of the Tsar, and again return through their land, those frontier lords shall pay all, through whose territory they came" (Властѣле краициници коѣ воиска тоугѣа греде и плени землю царевѣ, терѣ прѣиде ѡпетѣ прѣз' ныхъ землю, тизѣи властѣле, вѣсе

²³⁷ Novaković, *Zakonski spomenici*, p. 136.

²³⁸ Burr, "The Code of Stephan Dušan", p. 523; Novaković, *Zakonik*, p. 102; *Zakonik cara Stefana Dušana*, vol. III, p. 136.

²³⁹ The word *krajiste* is no longer used in modern Serbian. However, we can find a word, even the family name, *krajišnik* = border-soldier, frontiersman. Instead of *krajiste*, today the word *krajina* (крајина) is used, with the same meaning and etymology. On the territory of ex-Yugoslavia there are still three regions called *Krajina*: 1) in eastern Serbia, close to the Romanian border; 2) in northwest Bosnia, close to the Croatian border; and 3) in north Dalmatia (today in Croatia). See M. Blagojević, "Krajina" and "Krajiste", in *LSSV*, pp. 319–321, containing the list of references.

²⁴⁰ Cf. the "palatines" established by William I in Durham, Chester and Kent.

да платѣ прѣз' конѣх прѣидѣ дръжавѣ). Article 143: "If any brigand, coming through a frontier province, rob anywere and again return with his booty, let the Warden of the Marches pay sevenfold" (I ако се ѡбрѣтѣ гоуѣсаръ ѡшьдѣ прѣз' дръжавѣ крѣицѣнника и плени гдѣ годѣ и ѡпет се врати с пленѡмъ, да плакѣа крѣицѣникъ самосѣдѡ).²⁴¹

4.6 *Holding, Estate (država, дръжава)*

In the local administration of mediaeval Serbia, *država* (holding, estate) meant the area or county given by a monarch to a nobleman, probably lifelong. The nobleman's duty was to govern his estate.²⁴² Article 190 of Dušan's Law Code says that one half of mast in a county "belongeth to the Tsar and one half to the lord on whose estate it is" (И ако се ѡ жѡупи жирѣ роди, тога жира царѡ половина, а томѡ властелинѡ чѣа є дръжава половина).²⁴³ A *država* (holding, estate) could be lost "if any lord be on maintenance and do wrong to any man by rancour, waste his land, burns his house, or do any other mischief" (Кои є властѣлинъ на прѣселицѣ, комѡ пизмомъ коѣ зло ѡчини земли пленомъ и коуѣе пожеже, коє любо зло ѡчини, такози тази дръжава да мѡ се ѡзѣме, а ина да не дастѣ). The estate would be taken, as well, if any lord "seized villages and people against the law of my Empire" (ѡпленивъ сѣла и людѣи и затрѣвъ прѣзаконѣ царства ми).²⁴⁴

4.7 *Regions (vlasti, власти)*

Vlasti (regions) were new military and administrative districts introduced during the reign of Despot Stefan Lazarević.²⁴⁵ The whole country was divided into regions called *vlasti*, governed by dukes (*vojvode*). The first region (*vlast*) mentioned by the sources, in 1410, was the region of Novo Brdo, the most important economic centre of 15th-century Serbia.²⁴⁶ The aim of the reform was to strengthen the defence of the country against the incoming Turkish threat.

241 Burr, "The Code of Stephan Dušan", pp. 207 and 525; Novaković, *Zakonik*, pp. 43 and 110; *Zakonik cara Stefana Dušana*, vol. 111, pp. 112 and 140.

242 In modern Serbian the word *država* (држава) means State, country. In mediaeval terminology *država* had five different meanings: 1) State, country, like nowadays; 2) power, *imperium*; 3) part of the country, ruled by any member of the monarch's family; 4) local district, governed by a nobleman; and 5) regions ruled by the Serbian Orthodox Church. See M. Blagojević, "Država", in *LSSV*, pp. 165–169, with list of references.

243 Burr, "The Code of Stephan Dušan", p. 537; Novaković, *Zakonik*, p. 144; *Zakonik cara Stefana Dušana*, vol 111, p. 274.

244 Articles 57 and 142. Burr, "The Code of Stephan Dušan", pp. 209 and 525; Novaković, *Zakonik*, pp. 48–49 and 109; *Zakonik cara Stefana Dušana*, vol. 111, pp. 114 and 138.

245 In modern Serbian, *vlasti* (власти) is the plural of the name *vlast* (власт), meaning power, control.

246 See J. Mrgić, "Vlasti", in *LSSV*, pp. 92–93, with list of references.

Serbian Orthodox Church

1 Foundation

According to the research of Đorđe Radojičić, Serbs were converted to Christianity between 867 and 874, during the reign of Byzantine Emperor Basil I.¹ Until the end of the 12th century, Serbs were not under a single ecclesiastical organization. Some Serbs were subject to the jurisdiction of the Roman Catholic Archbishoprics of Split, Dubrovnik (today in Croatia) and Bar (today in Montenegro). The other Serbs were subject to the episcopates of Niš, Ras, Prizren and Lipljan,² which all belonged to the Greek Orthodox Archbishopric of Ohrid (today in North Macedonia). For a short time, some Serbs lived under the jurisdiction of the Greek Metropolitan of Dyrrachion (Greek Δυρράχιον, ancient *Epidamnus*, Serbian *Drač*, *Драч*, Italian *Durazzo*, modern *Durrës* in Albania). The border, separating the Roman Catholic and Greek Orthodox Churches, crossed through Serbian Lands.³

The first step towards the foundation of an autocephalous Serbian Church was practically made in 1191, when Nemanja's third son Rastko left the administration of Hum and became the Holy Mountain monk Sabba (Sava, Сава). His father joined him on Holy Mountain one year after his withdrawal from the throne (1197). In 1198, Nemanja and Sabba were granted a chrysobull from Byzantine Emperor Alexios III Angelos, permitting them to restore the small and abandoned monastery of Hilandar. In this way, Hilandar became an independent Serbian monastery, governed by father and son. In the same year Nemanja issued a charter in favour of Hilandar, creating the monastery manor.⁴ The existence of an autonomous Serbian monastery in the territory of the Byz-

1 Đ. Radojičić, "La date de la conversion des Serbes", *Byzantion* 22 (1952), pp. 253–256.

2 Niš and Ras are situated in the south of Serbia; Prizren and Lipljan are in Kosovo.

3 On Church organization in that epoch, see J. Kalić, "Crkvene prilike u srpskim zemljama do stvaranja arhiepiskopije 1219. godine" ["Church Circumstances in Serbian Lands until the Creation of the Archbishopric in 1219"], in *Međunarodni naučni skup Sava Nemanjić—Sveti Sava* (Belgrade 1979), pp. 27–53, and I. Komatina, *Crkva i država u srpskim zemljama od XI do XIII veka* [Church and State in the Serbian Lands from the 11th to the 13th Centuries] (Belgrade 2016).

4 On the foundation of Hilandar, see F. Barišić, "Hronološki problemi oko godine Nemanjine smrti" ["Chronological Problems on the Year of Nemanja's Death"], *HZ* 2 (1971), pp. 31–58. Cf. D. Bogdanović, V.J. Đurić, and D. Medaković, *Hilandar* (Belgrade 1978) (D. Bogdanović).

antine Empire clearly shows the intentions of the first Nemanjićs—a desire to create an autocephalous Church.

Nemanja's policy of friendship with Byzantium could not continue to exist after his death in 1199. The crusade's conquest of Constantinople (1204) and the splitting of Byzantium into several States, turned his son and successor Stefan Nemanjić to the West. In 1217 he obtained the royal crown from Rome. It seems that Sabba was not satisfied with the pro-Occidental policy of his brother. In the same year he left Serbia again (since 1206 he had been the superior of Studenitza monastery) and went to Holy Mountain. Two years later Sabba arrived in Nicaea (Νίκαια, modern Iznik in Turkey) where he obtained from the Emperor Theodore I Laskaris (Λάσκαρις)⁵ and Patriarch Manuel I Sarantenos or Charitopoulos (Μανουήλ Α' Σαραντηνός ή Χαριτόπουλος) an act constituting an autocephalous Serbian Church. According to that act Serbian priests had the exclusive right to elect their own Archbishop (Ἀρχιεπίσκοπος, literally "chief bishop") without any participation of the Constantinopolitan Church or the Byzantine Emperor. Sabba became the first Serbian Archbishop: nomination and *chirotony* (Greek χειροτονία, literally "stretching forth the hands") was done in presence of both Emperor and Patriarch on Palm Sunday in 1219.⁶

On his way back to Serbia, Sabba stopped first in Hilandar and than in Thessaloniki, where he was guest of the famous Metropolitan of Thessaloniki Constantine III Mesopotamites (Κωνσταντίνος Γ' ὁ Μεσσοποταμίτης).⁷ It seems that during his stay in Thessaloniki, in the monastery of Philokales (Φιλοκάλες), Sabba composed his *Nomokanon* (Законοправило).

5 Theodore I Laskaris, founder of the Empire of Nicaea and its Emperor (1205–1221).

6 Palm Sunday is the Sunday preceding Easter, commemorating in Christian churches Jesus' entry into Jerusalem, when the people strewed palm branches before him. On the foundation of the Serbian Archbishopric, see N. Radojčić, "Sveti Sava i avtokefalnost srpske i bugarske crkve" ["Saint Sabba and Autocephaly of the Serbian and Bulgarian Church"], *Glas SKA* 179 (1938), pp. 177–258; B. Gardašević, "Kanoničnost i sticanje avtokefalnosti Srpske crkve 1219. godine" ["Canonicity and Acquiring of the Autocephaly of the Serbian Church in 1219"], in *Sveti Sava, Spomenica povodom osamstogodišnjice rođenja 1175–1975* (Belgrade 1977), pp. 33–77; B. Ferjančić, "Avtokefalnost Srpske crkve i Ohridska arhiepiskopija" ["Autocephaly of the Serbian Church and Archbishopric from Ohrid"], in *Međunarodni naučni skup Sava Nemanjić—Sveti Sava* (Belgrade 1979), pp. 65–72; S. Pirivatrić, "Kriza vizantijskog sveta i postanak kraljevstva i avtokefalne arhiepiskopije svih srpskih i pomorskih zemalja" ["Crisis in the Byzantine World and the Beginning of the Kingdom and Autocephalous Archbishopric of All the Serbian and Maritime Lands"], in *Kraljevstvo i Arhiepiskopija u srpskim i pomorskim zemljama Nemanjića* [The Kingdom and the Archbishopric of the Serbian and Maritime Lands of the Nemanjić Dynasty] (Belgrade 2019), pp. 107–146. On chronology see V. Laurent, *Les registres des Actes du patriarcat de Constantinople 1/4* (Paris 1971), no. 1225.

7 On Sabba's sojourns in Thessaloniki, see M. Živojinović, "O boravcima Svetog Save u Solunu" ("On the Sojourns of Saint Sabba in Thessaloniki"), *IC* 24 (1977), pp. 63–71.

2 Organization

The new autocephalous Serbian Church had to be organized for the whole territory of the Serbian State. For this reason Sabba started to found new Serbian episcopacies. The monastery of Žiča became the seat of the first Serbian Archbishop. In this monastery Sabba performed the *chirotony* (the liturgical rite by which a candidate was ordained into one of the three major orders of the Christian clergy) of his eight followers for *episcopes* (bishops, from Greek ἐπίσκοπος) of the new and of the already existing dioceses (Greek διοίκησις, territorial unit of ecclesiastical administration). The list of episcopacies belonging of the Serbian Church can be seen from a short inscription preserved in one of the manuscripts of Matheas Blastares' *Syntagma* from 1453. The text has a title: "Chrysobull of Saint Sabba himself and his brother Stefan the First Crowned King, on seats of Serbian *episcopes*". Those of Hum and Zeta in the Maritime Lands, and the dioceses of Hvosno, Budimlje, Dabar, Moravica, Toplica, Ras, Prizren and Lipljan, in inner Serbia (Хрисовѹль самого свѣтаго Савы и брата его прѣвовѣнчаннаго крала Стефана, мѣста епископомъ сръбскимъ: ·Ѧ· зетскыи, ·Ѧ· рашкыи, ·Г· хвостънскы, ·Ѧ· хальмьскы, ·Ѧ· топличкы, ·Ѧ· будимьскы, ·Ѧ· дьбрьскы, ·Ѧ· моравичкы).⁸ The Episcopacy of Hum, with its seat in Ston (today in Croatia) had to oppose Roman Catholic influence coming from the Archbishopric of Dubrovnik (Ragusa). The peninsula of Prevlaka became the seat of the Episcopacy of Zeta, opposed to the Roman Catholic Archbishopric of Bar. However, none of the Roman Catholic dioceses within the Serbian State were abolished. Otherwise, the policy towards Greek Orthodox *episcopes* was different: the bishops of Ras, Prizren and Lipljan (all of them Greeks) were immediately, by hook or by crook, replaced with Serbian clergy.

Such a policy provoked a struggle with the Greek Orthodox Archbishopric of Ohrid, which was in that epoch governed by the educated canonist Demetrios Chomatenos (Δημήτριος Χωματηνός).⁹ In his letter to Sabba (May 1220), Cho-

8 Editions: Stojanović, *Stari srpski zapisi i natpisi I*, nos 302 and 303, pp. 93–94; Ćorović, *Spisi Svetog Save*, p. 196. On the organization of the Serbian Church, see M. Janković, "Episkopije srpske crkve 1220. godine" ["Episcopacies of the Serbian Church in the Year 1220"], in *međunarodni naučni skup Sava Nemanjić—Sveti Sava* (Belgrade 1979), pp. 73–84.

9 Demetrios Chomatenos, a central ecclesiastical figure in the independent State of Epiros; born mid-12th Century, died c.1236. In 1216/17 he was appointed Archbishop of the Autocephalous See at Ohrid by Theodore Komnenos Doukas, and in 1225 or 1227/8 Chomatenos crowned Theodore Emperor in Thessaloniki, thus inviting the censure of Patriarch Germanos II at Nicaea and causing a schism (1228–1233) between the Epirot and Nicaean churches. See R.J. Macrides, "Chomatenos, Demetrios", in *ODB*, p. 426.

matenos severely protested against the foundation of the autocephalous Serbian Church, against Sabba's *chirotony* for Archbishop and especially against the expulsion of the bishop of Prizren. According to him, the Serbian Lands were under the jurisdiction of the Archbishopric of Ohrid, and all that Sabba had done was against the rules of canonic law.¹⁰ Chomatenos repeated the same arguments a few years later (after 1224) in his letter to the Patriarch of Nicaea, Germanos II, answering the Patriarch's remarks on Chomatenos' coronation of Epiros' Despot Theodore Komnenos Doukas of the Angelos family, for the Emperor of Thessaloniki.¹¹ However, all the protests of Chomatenos were without results. Things could have become dangerous after the death of King Stefan the First Crowned (1227), when his son and successor King Radoslav, under the influence of his wife, the daughter of Theodore Angelos, asked the authority of Ohrid and its Archbishop Chomatenos on some liturgical questions.¹² But even that fact did not provoke a serious crisis: the Serbian Church was definitely established.

3 Legal Acts

The basic legal document, some kind of constitution of the Serbian Orthodox Church, was the *Nomokanon* of Saint Sabba, composed on Sabba's way back from Nicaea. The *Nomokanon* contains ecclesiastical rules and Roman (Byzantine) laws (see Chapter 2, section 4).

From a constitutional point of view, the *Nomokanon* of Saint Sabba defined the relationship between Church and State (monarch). Sabba chose those Byzantine laws that considered the monarch as submitted to the law. Canonic law has supremacy over secular laws, and that was a condition for so-called *symphonia*—concordance between Church and State (see above). The Emperor (monarch) has the executive and legislative power, but he has no right to

10 G. Ostrogorski, "Pismo Dimitrija Homatijana sv. Savi i odlomak iz pisma patrijarhu Germanu o Savinom posvećenju" ["Demetrios Chomatinos' Letter to St Sabba and a Fragment from the Letter to Patriarch Germanos on Sabba's Chirotony"], *SZ* 2 (1938), pp. 91–125 = *Complete Works*, vol. IV (Belgrade 1969), pp. 170–189.

11 The correspondence between Chomatinos and Germanos with translation into Serbian was edited by Gardašević, "Kanoničnost i sticanje autokefalnosti Srpske crkve 1219. godine". Cf. M. Petrović, *Studenički tipik i samostalnost srpske crkve* [The Studenitza Typikon and Autocephaly of the Serbian Church] (Belgrade 1986).

12 F. Granić, "Odgovori ohridskog arhiepiskopa Dimitrija Homatijana na pitanja srpskog kralja Stefana Radoslava" ["The Answers of Archbishop of Ohrid Demetrios Chomatinos on the Questions of Serbian King Stefan Radoslav"], *SZ* 2 (1938), pp. 147–189.

interfere in ecclesiastical matters (election and *chirotony* of *episcopes*), while the Church has a right of moral control of a ruler. The Church enjoys extensive judicial immunities, but *episcopes* can interfere in favour of poor persons and the unjustly persecuted.

Besides the *Nomokanon*, Sabba composed some other legal acts important for the organization and functioning of the Serbian autocephalous Church.¹³ The first of them was *The Act of Restoring of the Holy True-Believing Orthodox Faith*, promulgated in 1221 in the monastery of Žiča, which represented a Serbian version of *The Synodikon of Orthodoxy* (Τό Συνοδικόν τῆς Ὁρθοδοξίας).¹⁴ By that act the orthodoxy of the Serbian Church was defined and proclaimed. The document accepts all fundamental dogmata of the faith, according to the teachings of the Holy Fathers and dogmatic decrees of the Ecumenical Councils. On the other side, the *Act* anathematizes different heresies, which could be in either the Ecumenical or Serbian Church (as was the Bogomilian heresy).

Special attention was paid to the organization and development of monastic life. As Sabba himself was a Holy Mountain monk, monastic life and monastery constitutions (*typikon*, Greek τυπικόν, Slavonic оуставѣ or типикъ) were created according to the Byzantine model. The aim of Saint Sabba was to introduce into Serbia both types of Byzantine monastic organization: cenobitic and anchoritic.

Cenobitic (Greek κοινόβιον, Latin *caenobium*, Serbian обштите житије = place of common life) monasteries were organized as a firm community of spiritual life and economy, without private property, on the principle of absolute obedience and a strict division of duties. A superior (*iguman*, *hegoumenos*), who had extensive competencies, governed the monastery, but he had to consult the council of monks. Every function in the monastery was treated as a “service” (*služba*, служба) and every work as an “obedience” (*poslušanje*, послушање), so the power of the prior could not be unlimited. He had to consult not only the

13 On Sabba's legal documents see V. Mošin, “Pravni spisi svetoga Save” [“Legal Scriptures of Saint Sabba”], *Međunarodni naučni skup Sava Nemanjić—Sveti Sava* (Belgrade 1979), pp. 101–128.

14 A liturgical document produced after “The Triumph of Orthodoxy” (“ὁ Θρίαμβος τῆς Ὁρθοδοξίας”, before 920), the final defeat of Iconoclasm in 843, celebrated as the “Sunday of Orthodoxy” (“ἡ Κυριακή τῆς Ὁρθοδοξίας”) on the first Sunday of Lent. See V. Mošin, “Serbskaya redakcija Sinodika v nedelju pravoslaviya” [“Serbian Editing of Synodikon in Sunday of Orthodoxy”], *vv* 16 (1959), pp. 317–394, 17 (1960), pp. 278–353, and 18 (1961), pp. 359–360; A. Jevtić, “Žička beseda Svetog Save o pravoj veri” [“Žiča Oration of Saint Sabba on the True Faith”], in *Sveti Sava. Spomenica povodom osamstogodišnjice rođenja 1175–1975* (Belgrade 1977), pp. 117–180.

council of monks, but the other monastery officials as well.¹⁵ The most important of them were: 1) steward (ИКОНОМЪ, οἰκονόμος) whose task was to govern the monastery's economy, and was considered as the superior's replacement and potential successor;¹⁶ 2) *ekklesiarches* (ΕΚΚΛΗΣΙΑΡΧΗΣ, ἐκκλησιάρχης) who had to control the exact maintaining of divine services and the cleanness of the church and to provide the appropriate number of candles and lamps for the lighting of the church;¹⁷ and 3) *docheiarios* (ΔΟΧΕΙΑΡΙΟΣ, δοχείαριος) whose duty was to enter in the monastery cash-book all revenues and expenses.¹⁸ The King or Archbishop elected superiors of the great monasteries. This implies that they had a great reputation in society. All monks had to respect three oaths: of chastity, of poverty and of obedience. Interpersonal relationships were under the control of superior who tried very hard to induce the spirit of love and help. Permanent care for sick persons established small hospitals within the Serbian monasteries.¹⁹

For the needs of cenobitic monasteries Sabba composed two typikons (for Hilandar and Studenitza), which were used later as constitutions for all Serbian monasteries.²⁰ The typikon of the Holy Mother Benefactress (εὐεργέτης, БЛАГОДѢТЕЛЬНИЦА) monastery in Constantinople served as a model.

The typikon for a hermit's cell (κελλίον) in Karyes (1199) became a model for all Serbian anchorite monasticism that emanated out from Holy Mountain.²¹ The Slavonik word *skitski* (скитски, from Greek σκήτη, *asketerion*, "monastery", "hermitage") also commemorates the original Skete (Greek Σκήτις, Coptic *Shiet*), one of the most famous early Christian monastic centres in the Wādī Natrūn (west of the Nile Delta in Egypt). According to the Karyes typikon, Serbian anchorites did not live alone, but rather in a community of two or

15 F. Granić, "Crkvenopravne odredbe Hilendarskog tipika sv. Save o nastojatelju i ostalim manastirskim funkcionerima" ["Ecclesiastical and Legal Rules of St Sabba's *Typicon* on Superior and Other Monastery Officials"], *Bogoslovlje* 10 (1935), pp. 171–188; "Crkvenopravne odredbe Hilendarskog tipika sv. Save" ["Ecclesiastical and Legal Provisions of St Sabba's Hilandar *Typicon*"], *SZ* 1 (1936) pp. 65–128; "Crkvenopravne odredbe Karejskog i Hilendarskog tipika Svetoga Save" ["Ecclesiastical and Legal Provisions of Karyes and Hilandar *Typicon* of St Sabba"], *PKJIF* 16 (1936), pp. 189–198.

16 See R. Milošević, "Ikonon", in *LSSV*, pp. 252–253.

17 See M. Janković, "Eklisijarh", in *LSSV*, pp. 179–180.

18 See S. Popović, "Manastirski kompleks", in *LSSV*, pp. 381–384.

19 L. Pavlović, "Srpske manastirske bolnice u doba Nemanjića" ["Serbian Monastery's Hospitals in the Epoch of Nemanjićs"], *Zbornik pravoslavnog bogoslovskog fakulteta* 2 (1951), pp. 555–566.

20 Edited by Ćorović, *Spisi sv. Save*, pp. 14–150, and Jovanović, *Sveti Sava, sabrana dela*, pp. 13–147.

21 Ćorović, *Spisi sv. Save*, pp. 5–13; Jovanović, *Sveti Sava, sabrana dela*, pp. 3–11.

three persons. Nobody could become a hermit only by his own desire, but by a decision of the whole monastery council. The superior and the whole community had to consider whether the candidate was fit for a severe anchoritic life, full of continuous prayers and fast. Later, cells of Serbian hermits became a centre of literary activity.²²

4 Proclamation for a Patriarchate

The Serbian Orthodox Church became a Patriarchate in 1346. The proclamation was firmly connected to the wider policies of King Dušan and his intentions of becoming Emperor (Tsar). At the end of 1345 (probably on Christmas), Dušan was proclaimed Tsar in the city of Serres. The new title had to be approved by the Church in the rites of coronation and anointing. According to mediaeval customs, the Patriarch of Constantinople crowned Byzantine Emperors, while the Pope crowned Emperors of the West (starting with Charlemagne in 800). Dušan knew perfectly well that in such political circumstances neither the Patriarch of Constantinople nor the Pope (in that epoch in the French town of Avignon) would accept putting the imperial crown on his head. So, as the Empire could not exist without a Patriarchate and a Patriarch, it was decided to assign such a dignity to the Serbian Archbishop. The Serbian and Ohrid's archbishoprics and the Bulgarian Patriarchate supported this decision. With the assent of the three autocephalous Churches and in the presence of Serbian *episcopos*, Archbishop of Ohrid and Patriarch from Trnovo, Serbian Archbishop Ioanikije (Ιωαννίκιος, Ἰωαννίκιος) was proclaimed as Patriarch (between January and April 1346).²³ The State Council, gathered on that occasion in Skoplje, accepted the proclamation of Emperor and Patriarch. In the most solemn way, in the presence of the State Council and according to ecclesiastical rites and Byzantine ceremony, Dušan was crowned as Tsar in Skoplje at Easter, 16 April 1346. He received the imperial crown from the hands and with the blessing of Serbian Patriarch Ioanikije and Patriarch from Trnovo Simon. The blessing was given by all Serbian and Bulgarian, and some of the Greek, clergy, Holy Mountain protos (πρωτῶς, head of the Πρωτάτον, the central administration of Mount Athos) and all hegoumenes and important monks from the Holy Mountain

22 On Serbian monastic life in the Middle Ages, see Marković, *Pravoslavno monaštvo i manastiri u srednjovekovnoj Srbiji*.

23 M. Purković, *Srpski patrijarsi srednjeg veka* [Serbian Patriarchs from the Middle Ages] (Düsseldorf 1976), pp. 17, 18.

monasteries. However, the most important blessing—the one of Patriarch of Constantinople—was missing.

As Dušan acquired the imperial crown and founded the Patriarchate without the agreement of the Byzantine Emperor and Patriarch, he was looking for the jurisdiction in the Christian Church teaching. In his documents he insists “that all happened not according to my desire, neither by some force, but according to the blessing of God” (see above).

5 Conflict and Reconciliation with Constantinople

The proclamation of a Serbian Patriarchate provoked a reaction from Constantinople: using his rights, Kallistos I (Κάλλιστος), Patriarch of Constantinople (1350–1353 and 1355–1363), excommunicated Emperor Dušan, Serbian Patriarch Ioanikije and all priests from that Christian community.²⁴ After that act, the Orthodox world considered that the position of the Serbian Church was not legal. Relations with the Great Church of Constantinople were broken off, and the act of excommunication (*odlučenje*) meant that the Serbian high ecclesiastical hierarchy was not in canonical connection with Constantinople, and probably with the other Orthodox Churches as well. The Serbian court was excommunicated of the Ecumenical Patriarchate too, while the lower clergy and the people were not, but they suffered the consequences of the schism. However, after the death of Tsar Uroš (1371), Prince Lazar, pretending to be sovereign lord of the whole of Serbia, began to seek reconciliation in order to establish canonical unity and legalize, in that way, his own position. The schism disturbed his claim as supreme ruler of all the Serbian Lands, and he had to put it to an end.²⁵ Symmetry between the holders of secular and spiritual power, as a required characteristic of sovereignty according to the mediaeval Orthodox concept, had to exist.

24 The precise date of the “anathematize” remains unknown, but it could have happened between June 1350 and November 1353, when Kallistos was for the first time Patriarch of Constantinople. According to Ostrogorski, *Serska oblast posle Dušanove smrti*, p. 129, the excommunication was pronounced in autumn 1350, being a part of John Cantacuzenos’ large offensive against Serbia. V. Mošin, “Sv. patrijarh Kalist i srpska crkva” [“St Patriarch Kallistos and the Serbian Church”], *Glasnik srpske pravoslavne crkve* 9 (1946), pp. 192–206, thinks that the *anathema* came after the armed conflict between John v Palaiologos and John vi Cantacuzenos (late autumn 1352–November 1353).

25 For more details on the reconciliation, see D. Bogdanović, “Izmirenje srpske i vizantijske crkve” [“Reconciliation of the Serbian and Byzantine Church”], *O knezu Lazaru*, pp. 81–91, and Đ. Slijepčević, *Istorija srpske pravoslavne crkve* [History of the Serbian Orthodox Church], vol. 1 (Belgrade 1991), pp. 160–175.

Partial reconciliation was attained even before, in the region of Serres. For the purpose of organizing a common front against the Turks, the Byzantines started negotiations with the court in Serres (1346), governed by Dušan's widow Empress Helen (Jelena, Јелена), but the reconciliation was attained not until 1371, just before the battle of Maritza (ancient Ἐβρος, Černomen, modern Ormenion in Greek Thrace) with Despot John (Jovan, Јован) Uglješa. A few years later (1386), John Uglješa issued a letter, some kind of penitence, pronouncing harsh words against Tsar Dušan as a usurper of Byzantine imperial and ecclesiastical rights.²⁶ The letter, however, is the product of a Byzantine hand and was written in Constantinople. Only the Serbian signature belongs to Uglješa. The main purpose of the letter was to repudiate the jurisdiction of the Serbian Church in conquered Byzantine territories and to return the metropolitanates to the jurisdiction of the Patriarchate of Constantinople. However, John Uglješa's separate reconciliation with Constantinople did not arrange official relationships between the two Orthodox Churches. Definitive reconciliation was done when the initiative came from Prince Lazar, as supreme holder of secular power, and Serbian Patriarch Sabba (Sava) IV, as head of a Church.

According to the story of Bishop Mark (Marko, Марко), immediately after the death of Patriarch Sabba (29 April 1375), pious Prince Lazar took advice from the Council, his noblemen and the Holy Mountain monks. They all made a decision to choose the delegates for negotiations with Constantinople.²⁷ However, it seems that a decision was made at the end of 1374 (before the death of Patriarch Sabba) by a State Council. After that, the Serbian delegation, composed from Holy Mountain monks (without any bishop), went on negotiations to Constantinople.

The agreement of reconciliation, very favourable for the Serbs, was attained in Constantinople, it seems, very easily. "Dissolution" of the act of excommunication was given to the Serbs. According to the Serbian sources, the Great Church from Constantinople recognized the autocephalous Serbian Patriarchate as legal.²⁸ The proclamation of reconciliation was done in Prizren,

26 The text of the letter was edited by F. Mikloich and J. Müller, *Acta et diplomata graeca medii aevi sacra et profana* 1 (Vienna 1860), pp. 660–664, and Solovjev and Mošin, *Diplomata graeca*, pp. 259–267 (with a translation in Serbian). Cf. Petrović, *Studenički tipik i samostalnost srpske crkve*, where the author gives a new translation of John Uglješa's letter (pp. 163–165).

27 Đ. Trifunović, "Žitije svetog patrijarha Jefrema od episkopa Marka" ["Life of Saint Patriarch Jephrem Written by Bishop Mark"], *Anali filološkog fakulteta* 7 (1967), p. 71.

28 However, there are no Greek sources which testify on recognition. For more details see

on the grave of Emperor Dušan, in his foundation—the monastery of Saint Archangels Michael and Gabriel (in spring 1375). In that act two delegates of the Patriarchate of Constantinople—monks Matthew and Mark—participated. This way the conflict was over.

6 Legal Position

The Serbian Orthodox Church had a privileged position in the Serbian mediæval State and society. Some of those privileges were analysed in Part 2, concerning the law of persons, and the others will be examined in Part 4, Chapters 11, 12, and 14, on the law of property, the law of obligations, and family law; Part 5 on criminal law; and Part 6 on the judiciary system. Here, we will quote only those articles of Dušan's Law Code which regulate the general privileges and organization of the Church.

Article 12 gives a general declaration on the organization of the Church, saying: "And laymen²⁹ shall not judge clerical matters. And should any layman judge an ecclesiastical matter, let him pay 300 perpers. Only the Church shall judge [ecclesiastical matters]" (И доуховномѣ дльгѣ, козмици да не сѣдѣтъ; кто ли се наиде ѿт козмиць соудивъ црьковномѣ дльгоу да плати .ѿ. перперь; тѣмъ црьковъ да соудѣи).³⁰

On the duties of bishops speaks article 11:

And bishops shall appoint priests in all parishes, in towns and in the villages: and those priests shall be those who have been blessed by the bishops spiritually to bind and to set free, and let every man hearken to them, according to the law of the Church. And those priests whom bishops have not appointed, let them be driven out and let the Church punish them according to the law.

И светителѣне да поставе доуховныкы по вѣсѣхъ инорѣахъ, по градовѣхъ и по селѣхъ; и тѣмъ доуховныци да сѣ кон сѣ благословени отъ светителѣа и доуховно везати и рѣшити и да ихъ слѣша вѣсаки по законѣ црьковномѣ;

D. Bogdanović, "Oživljavanje nemanjićkih tradicija" ["Restoring of Nemanjić's Traditions"], in *ISN*, vol. 11 (Belgrade 1982), p. 13 and notes 23 and 24.

29 The word is *kosmici*, Greek κοσμικοί, worldly as opposed to spiritual men.

30 Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 16; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

и ѿницїи доуховници, коих несѣ поставили доуховныцїи да се ижденѣ; да их вѣдѣвѣса црква по законѣ.³¹

Article 13 says that “Metropolitans, bishops or hegoumenos may not be appointed by bribery; and from now whoever shall be appointed Metropolitan, bishop or hegoumenos by bribery, let him be accursed, as also he who appointed him” (И митрополитѣ, епископѣ, игоумни по митѣ да се не поставѣт; и ѿт сѣда кто се наидѣ поставивѣ по митѣ митрополита, или епископа, или игоумна, да нестѣ проклетѣ и ѿнѣзи кои га не поставиль).³²

Articles 4 and 5 give to the bishops the right to mete out ecclesiastical punishments:

Article 4:

And as his spiritual duty, every man must show obedience and submission to his archpriest. And if any man sin before the Church or transgress any of these laws willingly or unwillingly, let him submit himself and give satisfaction to the Church: and if he listens not and disobeys and submits not to the orders of the Church, then let him be separated from the Church.

И за доуховны дльгъ вѣсакъ чловѣкъ да иматѣ повиновѣнїе и послушанїе къ своемуѣ архїерею; ако ли се кто вбрътѣ съгрѣшивѣ цркви или прѣстоупивѣ что любо ѿт сїега законника волюм али нехотѣнїемъ, да се повине и исправи се цркви; ако ли прѣчюне и оудръжи се ѿт цркви, не вѣсхоцѣ исправити повелѣнїа цркви, потѣм да се ѿтлоучи ѿт цркви.³³

Article 5:

Bishops³⁴ shall not curse Christians for spiritual sins, but shall send twice and thrice to reproach him who has sinned. But if he will not then obey and show himself willing to carry out the order of the Church, then let him be separated.

31 Burr, “The Code of Stephan Dušan”, p. 200; Novaković, *Zakonik*, pp. 14–15; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

32 Burr, “The Code of Stephan Dušan”, p. 201; Novaković, *Zakonik*, p. 17; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

33 Burr, “The Code of Stephan Dušan”, p. 199; Novaković, *Zakonik*, p. 9; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

34 Literally *consecrators*, in Serbian text *svetiteljje*.

И свѣтителѣ да не проклинаю христїанъ за съгрѣшенїе доухоувно; да пошле дваци или трици къ вномѣзїи да га величїи; да ако не чюе и не оусхоуе исправи́ти заповѣдїю доухоувною, потѣм да втлоучит се.³⁵

Article 14 starts a sequence of articles regulating monastic life:

Hegoumenos may not be appointed without the consent of the Church; as hegoumenos in monasteries good men shall be appointed, who will enrich the Church, the House of God.

Игоумены да се не поставляю без дела въ църкве. Игоумни по манастирѣхъ да се ставѣ добріи чловѣци кои те църковь стожи домъ божїи.³⁶

Article 15:

Hegoumenos shall live in the monasteries³⁷ according to the law and the elders shall confer.

Игоумни да живѣ оу кѣнобіахъ по законѣ, зговарае се старци.³⁸

Article 16:

And for 1,000 houses let there be fed in the monastery 50 monks.

И на тысящѣхъ кѣхъ да се храни оу манастирѣхъ ꙗко калѣгѣрь.³⁹

Article 17:

And monks and nuns who are shorn and live in their own homes shall be driven out to live in the monasteries.

35 Burr, "The Code of Stephan Dušan", p. 199; Novaković, *Zakonik*, p. 10; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

36 Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 19; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

37 The word used is *kinovija*, Greek κοινόβιον, place of common life.

38 Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 19; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

39 Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 20; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

И калѡгѣриѣ и калѡгѣрице коѣ се постризаю, тере живѡ оу своихъ коукахъ;
да се ижденѡ и да живѡ по манастирѣхъ.⁴⁰

Article 18:

And monks who have taken the tonsure near their native district may not live in the church, but shall go to another monastery; and food shall be given them.

И калѡгѣриѣ кои се сѡ постригли топици коѣ цркви да не живѡ оу тезѣи
цркви, нѡ да гредѡ оу инѣ манастирѣ; и да им се дава храна.⁴¹

Article 19:

And a monk who abandons the habit, let him be kept in a dungeon⁴² until he return again to obedience and let him be punished.⁴³

И калоугѣрь кои сврже расе, да се дрѣже оу тѣмници, докла се вѣрати впецѣ
оу послѡшаніѣ и да се пѣдеп'са.⁴⁴

Article 27:

And the Tsar's churches shall not be subject to the Great Church.⁴⁵

И цркви царскѣ да се не подлаю под цркви велѣ.⁴⁶

40 Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 20; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

41 Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 21; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

42 Serbian word is *tamnica*, i. e. "dark place" (prison).

43 Or "do penance". The word used is *pedepsati* (in article 11 *vedevsati*), from Greek παιδεύειν, ἐπαίδευσα = to punish.

44 Burr, "The Code of Stephan Dušan", p. 202; Novaković, *Zakonik*, p. 22; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

45 The Great Church (*Velika Crkva*) is here the chief State Church, the Patriarchate, the Archbishop's or Metropolitan Church. In Dušan's time there were two, one in Ohrid, the other at Peć. "Tsar's churches" were, like the Greek λάβραι, monasteries of royal foundations, privileged by charters, with complete autonomy, especially in administrative and economic matters (Burr, "The Code of Stephan Dušan", p. 203).

46 Burr, "The Code of Stephan Dušan", p. 203; Novaković, *Zakonik*, p. 27; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

Article 28:

And in all churches the poor shall be fed as is written by their founders; and should any one fail to feed them, be he Metropolitan, bishop or hegoumenos, he shall be deprived of his office.

И по вѣсѣхъ црквиахъ да се хране оубоѣи, како естъ оуписано въ ктиторь; кто ли не оусхрани въ митрополитъ и въ епископъ или въ игѣмень, да се вълоучи сана.⁴⁷

Article 29:

And monks shall not live outside the monastery.

И калѣггеріе да не живѣ извънь монастыра.⁴⁸

Article 36:

And let there be established communal rule⁴⁹ for the monks in the monasteries, according to the capacity of the monastery.

И да оуставѣ по црквиахъ законъ кѣновійскыи калѣггеромъ оу монастырѣхъ, противѣ како естъ кон монастырь.⁵⁰

Article 37:

Laymen may not be officials⁵¹ and Metropolitans shall not send them to priests, nor may they conduct horses of the Metropolitan from priest to priest, but the Metropolitan shall send one monk with another from priest to priest, to conduct the business of the Church, that the priests may send the revenue which they have taken from their land.⁵²

47 Burr, "The Code of Stephan Dušan", p. 203; Novaković, *Zakonik*, p. 27; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

48 Burr, "The Code of Stephan Dušan", p. 203; Novaković, *Zakonik*, p. 28; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

49 Literally "cenobitic law" (*zakon kinovijski*).

50 Burr, "The Code of Stephan Dušan", p. 205; Novaković, *Zakonik*, p. 34; *Zakonik cara Stefana Dušana*, vol. III, p. 108.

51 The word used is *eksarci*, literally "exarchs".

52 The word is *baština*.

И ес'гар'си козмици да несѣ, да их не посилаю митрополитѣ по поповѣхъ; ни да воде конь митрополит'скихъ по поповѣхъ; развѣ да посила митрополитъ калѣгнера самодругаго по поповѣхъ да исправе доуховно; и доходыкъ доуховны да оузме ѿт поповъ, кои естъ ѿт бацине.⁵³

- 53 Burr, "The Code of Stephan Dušan", p. 205; Novaković, *Zakonik*, p. 35; *Zakonik cara Stefana Dušana*, vol. III, p. 108. On the legal position of the Serbian Orthodox Church, see S. Šarkić, "L'Église et la religion dans le Code d'Etienne Douchan", *Méditerranées, Revue de l'association Méditerranées, publiée avec le concours de l'Université de Paris x—Nanterre*, No. 16 (1998), pp. 129–136.

PART 4

Civil Law



Natural Persons (Individuals) and Legal Persons (Entities)

1 Natural Persons (Individuals)

In modern jurisprudence the term *individual* denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation or association.

Serbian legal sources use the terms *glava* (ГЛАВА, κεφαλή, *caput*, head), or sometimes *kapa* (КАПА, *cap*, hood) to designate natural persons (individuals). The term *glava* can be found in two treaties with Dubrovnik concluded by Tsar Dušan (20 September 1349) and his son and successor Tsar Uroš (25 April 1357). In both we find the same formula *da gredu svoimi glavami* (ДА ГРЕДУ СВОИМИ ГЛАВАМИ),¹ meaning that Ragusan merchants could freely circulate within Serbia as individuals. In article 31 of the Law Code of Stefan Dušan, on parish priests, the following expression is used “and the priest’s cap is free” (И ДА ЕСТЬ ПОПОВСКА КАПА СВОБОДНА).² This means that parish priests, as natural persons (individuals), were exempt from the feudal services that commoners normally had.

Only individuals who were free had full legal capacity. Slaves (*otroci*) were owned by their masters and therefore had neither private nor public rights. However, in mediaeval Serbia there were several exemptions from that general rule (see Chapter 5, section 3).

Women possessed full legal capacity in Serbian mediaeval law (see below).

According to the Serbian legal sources it is not clear at what age full legal capacity was assumed. The charter presented by King Milutin to the monastery of Saint Stephen in Banjska says “that a widow, who has a little boy, should hold the whole village until her son is grown-up” (А СИРОТА КОЈА ИМАА МАЛА СЫНА, ДА СИ ДРЪЖИИ ВЪСЕ СЕЛО ДОГ’ДЪ ЊИ СЫНЬ ПОДРАСТЕ).³ It is clear that persons under age could not enter into formal transactions, but what was the age when natural persons (individuals) assumed full legal capacity? The so-called “*Justinian’s*

¹ SSA 11 (2012), p. 38; SSA 12 (2013), p. 81.

² Burr, “The Code of Stephan Dušan”, p. 204; Novaković, *Zakonik*, p. 29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

³ Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

Law" in article 1 provides that full legal age was assumed at the age of 25 (Λιце бѹдѣть члѡвѣкъ въ рѣстоми, кѣ, лѣтъ).⁴ The Serbian translation of the *Syntagma* of Matheas Blastares exposes the very complicated Byzantine system of three ages in the life of natural persons: 1) young persons (μλλδι, ἄνηβοι) seen as not having reached puberty (14 male, 12 female) had no legal capacity, and they were under tutorship (πριставνικъ, ἐπίτροπος, *tutela*); 2) individuals who had reached puberty were, nevertheless, too young to administer their affairs, and they were under *cura* (печаловъникъ, κουράτωρ, guardianship over minors) until the age of 25, either male or female; 3) a person who reached *perfecta aetas* at the age of 25 had full capacity to act on their own behalf.⁵ However, according to Byzantine law, four more years were required for establishment (οὐσταμενιῆ, ἀποκατάστασις) of all legal rights of an ex-minor, so that consent of a *curator* was no longer needed at the age of 30.⁶ Further, according to our remaining legal sources it is impossible to say whether those Byzantine rules were applied in mediaeval Serbia and whether full legal capacity was assumed at the age of puberty (14 male, 12 female).⁷

2 Legal Persons (Entities)

In Serbian mediaeval law it was mostly churches and monasteries that had the trait of a legal person (entity—an organization entitled to acquire and enjoy rights and duties, particularly considering their property). Beside them, towns, villages, counties and districts also had some characteristics of legal persons.

Serbian monarchs gave lands and estates to churches and monasteries and that way they became subjects of property rights. To designate ecclesiastical entities Serbian legal documents use different terms. For example, in the

4 Edited by Marković, p. 53.

5 Novaković, *Syntagma*, p. 308. Greek text edited by Ralles and Potles, pp. 293–294.

6 Novaković, *Syntagma*, pp. 144–145.

7 According to the opinion of Taranovski, *Istorija*, vol. 111, p. 7, it is not possible to suppose that such a complicated system could have been applied in mediaeval Serbia, because of the simplicity of Serbian society. It is much more likely that the legal age was assumed at the age of puberty. As the argument for his opinion, Taranovski adds that all rules on legal age were omitted in the abridged version of the *Syntagma*. See also S. Šarkiċ, "O sticanju poslovne sposobnosti u srednjovekovnom srpskom pravu" ["On the Acquirement of Legal Capacity in Serbian Mediaeval Law"], *ZRVI* 43 (2006), pp. 71–76. The same paper, with some amendments, has been published in Italian as well: "Sull' acquisizione della capacità di agire nel diritto medievale serbo", *Diritto e Storia, Rivista internazionale di Scienze Giuridiche e Tradizione Romana*, no. 6 (2007), pp. 1–6.

chrysobull issued between 1303 and 1331, King Milutin says that he gave everything to the church of the Holy Virgin in Hilandar (И сии в'са ѿже придала кралеѣвство ми црькви Светыѣ Богородице Хилан'дар'скыѣ).⁸ The same term—"church" (црьква, *crkva*) can be found in the chrysobull of Tsar Stefan Dušan from 1346: "Let that all have the church of Saint Stephen" (да има црьква Светаго Степана).⁹

In some legal documents the term *hram* (храмъ) = temple, shrine (for example, the Holy Shrine of Saint Nicholas in Vranjina, the Shrine of Holy Virgin in Hilandar, the Shrine of Saint Protomartyr Stephen in Banjska, etc.) was used instead of the word *crkva* (church).¹⁰ However, most frequently we find the term monastery (монастирь, монастырь or наместирь, manastir). Already the Great Župan Stefan Nemanjić, in his charter to the monastery of Hilandar (1199–1208), says that he gave villages to the monastery (И дахъ села монастыроу).¹¹ The monastery of Saint Stephen in Banjska, the monastery of Saint George near Skoplje, the monastery of Saint Nicholas Mrački, the monastery of Holy Virgin in Htetovo, the monastery Treskavac, and many others,¹² are mentioned in the same fashion (as legal persons). However, one could note that the name monastery is often replaced with the term church. In Serbian legal documents, Hilandar, for example, is called equally a church and a monastery.

To designate legal persons Serbian monarchs sometimes used figurative expressions, saying that they had given estates to the eponymous saint of the monastery, so *the saint* has a feature of a legal entity. We shall quote a few examples: King Stefan Vladislav writes between 1234 and 1237 that he gave a village of Branike to the Most Pure Virgin (ѿа Стефанъ Владиславъ, съ помощию Божию краль ... придахъ то село Бранике Прѣчистои Богородици).¹³ King Stefan Dušan (1343–1345) says that he gave a small gift to the Most Pure Mother of God from Hilandar (Тѣмже и азъ въ Христа Бога вер'ни Стефанъ .ѿ., по милости Божиен краль срьп'скихъ и помор'скихъ земель и четьникъ Грькомъ ... принесохъ мали си даръ ... прѣчистои матери Божиен Хилан'дарьской).¹⁴ Tsar Dušan writes (1354–

8 Mošin, Ćirković, and Sindik, *Zbornik*, p. 382.

9 Novaković, *Zakonski spomenici*, p. 631, para. iv.

10 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 62, 82, 91, 94, 127, 162, 163, 197, 230, 250, 251, 254, 261, 317, 396, 428, 439, 440, 442, 458, 468, 471, 486, 501, 503, 529, 541, etc.

11 Ibid., p. 83.

12 Ibid., pp. 62, 69, 73–76, 82, 83, 94, 109, 115, 116, 166, 167, 192, 233, 251, 254, 268, 303, 308, 313, 314, 317, 332, 380, 382, etc.

13 Ibid., p. 148.

14 SSA 4 (2005), pp. 70, 71.

1355) that he gave estates to Saint Nicolas (И сие приложи царство ми светому Николѣ).¹⁵

In some legal documents the entity of a church or monastery was expressed as the home (домъ, *domus*) of a certain saint. For example, “the home of the Holy Virgin from Hilandar” (Домоу Светыне Богородице Хилан’дар’скыи),¹⁶ “the home of Our Almighty (Pantokrator) Lord” in Dečani (Начехъ здати домъ господеву Богоу моему Пан’дократору),¹⁷ “the home of the Savior, of the Orthodox Patriarchs of Our Fatherland” (Такожде и въ Домоу Спасовѣ, православни патриархи отчѣства нашего),¹⁸ “the home of the Holy Virgin in Ston” (Домоу Светыне Богородице оу Стонѣ),¹⁹ etc. It is evident that the figure of the saint expresses the concept of churches and monasteries as institutions, i.e. legal persons (entities).

According to the opinion of some authors, towns also had the feature of legal persons.²⁰ The arguments of those historians are based on two articles of the Law Code of Stefan Dušan and two charters. First, article 124 is as follows: “Greek towns which the Lord Tsar hath taken, whatsoever charters and decrees have been granted to them, whatsoever they have and hold up to the time of this Council, let them hold, and it is confirmed to them and let no man take anything from them” (Градѣвъ грѣчьцѣи коихъ естъ прѣль господинъ царь, цю имъ естъ оучиниль, хрисовѣале и простаг’ме цю си имаю гдѣ и дръже до сѣгазѣи събора, тозѣи да си дръже и да имъ естъ тврѣдо и да им се не оузме ницю).²¹ This means that towns conquered from Byzantium (“Greek towns”) possessed real or immovable property. Likewise in article 137 we find general confirmation of all chrysobulls granted to the towns.²² One can conclude that the towns were treated as legal persons (entities) enjoying absolute ownership on their lands. To support such a statement we shall quote two charters of Serbian monarchs: in the first charter Serbian King Stefan Radoslav (24 July 1230) confirms to the maritime town of Kotor all its property rights and lands and vineyards (*con-firmo tutti li orti et le vigne loro*);²³ in the second charter Tsar Dušan confirms

15 Ibid., p. 138.

16 Mošin, Ćirković, and Sindik, *Zbornik*, p. 441.

17 Ivić and Grković, *Dečanske hrisovulje*, p. 75.

18 SSA 7 (2008), p. 77.

19 Mošin, Ćirković, and Sindik, *Zbornik*, p. 196.

20 For more details see Taranovski, *Istorija*, vol. III, pp. 25–26.

21 Burr, “The Code of Stephan Dušan”, p. 521; Novaković, *Zakonik*, p. 95; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

22 See Chapter 6, section 3.

23 Mošin, Ćirković, and Sindik, *Zbornik*, p. 120. The charter was preserved only in Italian translation.

(1346–1355) the property rights of the same Kotor town (*Et Io Steffano per la gratia de Dio Imperador de Sclauonia, et de Romania ... sacramentai de obseruar à ciascadun le lor terre, et Priulegij, et patrimonij, et confirmarli tutti, et maiormente alii zentihluomeni de Catharo per la lor vera fede, et honoreuol merito, et seruizio meritado à li nostri antecessori, et specialmente al nostro imperio*).²⁴

The abovementioned documents refer only to the Byzantine (Greek) and maritime towns as legal persons. What was the situation regarding towns in the interior of Serbia? The Law Code of Stefan Dušan (article 126) mentions “urban land around the town” (ГрАДЦА ЗЕМЛІА ЦЮ ІЕ УКОЛО ГРАДА),²⁵ but we do not have any proof that the land was in the absolute ownership of the town. Anyway, it is very hard to say whether towns in Serbia were considered as legal persons, because we have very little information in the sources.

We have much more data regarding villages as legal persons (entities) and subjects of property rights. Article 74 of the Law Code of Stefan Dušan provides that villages have the right to pastures: “Let village pasture with village, where one village, there also the other. Only legal enclosures and meadows may not be grazed” (СЕЛО СЕЛЮМ ДА ПАСЕ; КОУДЪ ЕДНО СЕЛО ТОУДЪ И ДРУГО; РАЗЕВЪ ЗАБЕЛЬ ЗАКОНИТЫХ, И ЛИВАДЬ ЗАКОНИТЫХ НИКТО ДА НЕ ПАСЕ).²⁶ However, it is not clear whether the villages had ownership of the pastures or had only a servitude. Article 79 provides: “But if villages dispute between themselves touching land and boundaries, let them sue by the Law of the Sainted King²⁷ from the time of his death” (А ЗА МЕРІЕ И ЗА ЗЕМЛЮ, ЦЮ СЕ ПОТВАРЯЮ СЕЛА МЕРЮ ЦОВОМЪ, ДА ИЩЕ СОУДОМЪ УТ СВЕТАГО КРАЛІА КЪДИ СЕ ІЕ ПРЕСТАВИЛЬ).²⁸ So, the villages could be either plaintiff or defendant in a lawsuit, which proves that they were considered legal persons in civil law cases. If they had no property rights on their land, villages could not have had any judicial claim.

According to article 75 of the Law Code of Stefan Dušan we can conclude that counties or districts (*župe*) had some rights to pastures, as well: “No dis-

24 Edited by S. Ćirković, “Povelja cara Stefana Dušana o granicama Kotora” [“Charter of Emperor Stefan Dušan concerning the Limits of Kotor Town”], *SSA* 10 (2011), p. 40. The charter survives only in an Italian translation from the 15th century. There is another charter of Tsar Dušan to the City of Kotor (1351). The Cyrillic transcript of this charter from the 17th century was edited by Novaković, *Zakonski spomenici*, pp. 31–32.

25 Burr, “The Code of Stephan Dušan”, p. 522; Novaković, *Zakonik*, p. 97; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

26 Burr, “The Code of Stephan Dušan”, p. 212; Novaković, *Zakonik*, p. 59; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

27 “The Sainted King”, in the Code, always means King Milutin, Dušan’s grandfather.

28 Burr, “The Code of Stephan Dušan”, p. 213; Novaković, *Zakonik*, p. 63; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

trict may graze its stock within another district. And if in the district there be a separate village which belongs to any lord, or to my majesty, or is a Church village, or belongs to a gentleman, that village shall graze with the rest of the county district and no man shall forbid it to so graze" (Жоупа жоупѣ да не попаса добит'комъ ница; ако ли се наиде едно село ѿ този жѡпѣ, оу кога любо властѣлина, или естъ царства ми, или естъ црьковно село. Или властѣличика; вномѡзи селѡ никто да не забрани пасти; да пасе коудѣ и жоупа).²⁹ However, this is not sufficient to assert that counties and districts in mediaeval Serbia had features of legal persons (entities).

Legal persons (entities) administered their affairs and effected their rights through their legal agents. The Serbian legal sources give us information only on churches and monasteries as legal persons. The legal agents of monasteries were their superiors (игоумень, игоумнь, игеумень, ἡγουμένος, *hegoumenos*)³⁰ who could enter into formal transactions in the name of a monastery or a church. However, a monastery superior could perform important legal acts only with the consent of elder monastery brothers. This was clearly written in Tsar Dušan's charter to the monastery of Saint Archangels Michael and Gabriel (1348): "And the monastery superior can do or give nothing without agreement with *oikonomos* and *bašta* [father] and *ekklesiarches* and *docheiarios*" (И да нѣ волнь игоумнь ница ѿдати ни оучинити безъ зговора иконома и баще и еклисиарха и дохиара).³¹ The sale of monastery land could be performed with the agreement of the whole monastery community (И зговорише се съ кралевством ми вса братина иже въ манастири светые Богородице Хилан'дар'ские).³²

Article 35 of the Law Code of Stefan Dušan explicitly states that the superior is the legal agent of the monastery: "And my majesty has granted to the *hegoumenes* their churches, that they be rulers of their goods, both mares and horses and sheep and everything else and that they may do with them whatsoever is deemed suitable and appropriate and lawful, and as is written in the chrysobulls of the holy founders" (И прѣдаде царство ми игоуменомъ црькви да вбладаю въсѡм коукѡм, кобилами и кон'ми, и ов'цамъи, и инемъ въсѣмъ и ѡ въсѣмъ да съ вол'ным, цю естъ прилично по пѣтѣ и по правдѣ, и како пише хрьсовоуль светихъ ктѣторь).³³ A superior had to be appointed with the con-

29 Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 60; *Zakonik cara Stefana Dušana*, vol. III, pp. 118, 120.

30 See M. Janković, "Iguman", in *LSSV*, pp. 247–249.

31 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 111.

32 King Milutin's treaty with the Council of the Hilandar monastery (between 17 May 1317 and 29 October 1321), edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 517.

33 Burr, "The Code of Stephan Dušan", p. 205; Novaković, *Zakonik*, p. 33; *Zakonik cara Stefana Dušana*, vol. III, p. 108.

sent of the monastery community, and the superiors had to be honest persons (article 14): “Hegoumenes may not be appointed without the consent of the Church; as hegoumenes in monasteries good men shall be appointed, who will enrich the Church, the House of God” (Игоумены да се не поставляю без дела въ црькве. Игоумены по манастирѣхъ да се ставѣ добріи чловѣци, кои те црьковъ стожити Домъ Божїи).³⁴ Finally the Law Code orders (article 15) that superiors perform legal acts with the consent of the community: “Hegoumenes shall live in the monasteries according to the law and the elders shall confer” (Игоумены да живѣ оу кѣновїахъ по законѣ, зговараѣ се съ старци).³⁵

Dušan's Law Code did not, however, issue the rule that a monastery's land could be sold only with the common agreement of the whole monastic community. This gap in the law could be explained by the fact that the sale of monastery lands in practice was very rare. In a case when a monastery wanted to sell its land, it should have obtained a special confirmation of a monarch, that was to be written in the separate charter.

34 Burr, “The Code of Stephan Dušan”, p. 201; Novaković, *Zakonik*, p. 19; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

35 Burr, “The Code of Stephan Dušan”, p. 201; Novaković, *Zakonik*, p. 19; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

The Law of Property

1 The Concept of a “Thing”

The Serbian mediaeval law of property was concerned essentially with things (*res*), their acquisition, and their transfer. The things (*res*) were considered as objects and as rights in objects that had economic value. However, Serbian mediaeval law does not abstractly use the idea of a thing (*stvar*, *сѣвар* in Serbian). In every case, the Serbian legal sources quote and name any single thing that was the object of the transaction.

The oldest expression used to designate property was *dobitak* (ДОБИТЬКЪ, *добутак*). Literally, the word means “gain”, “asset”, but in the legal documents from the 13th and 14th centuries, the term was primarily understood as “cattle”, “livestock”, which was considered the most primitive form of man’s fortune.¹ Such a concept could be clearly seen in King Dušan’s charter presented to the Ragusans (Dubrovčani) concerning the customs of servant (сѣдѣла)² Dabiživ, from 26 October 1345, where the duty “on cattle [*dobitak*] which goes to Dubrovnik” (и ѿд добитка кои гредѣ ѿ Дѣбровникъ) was mentioned.³ In the same meaning, the word *dobitak* was used in King Dušan’s charter giving the church of Saint Nicolas in Vranje to the monastery of Hilandar (1343–1345): “And what the cattle graze” (И цю пасѣ добитъкъ).⁴ The code of Stefan Dušan in article 75 says: “No district may graze its stock within another district” (Жоупа жоупѣ да не попаса добит’комъ ница).⁵ However, in 13th-century documents, *dobitak* also began to designate the abstract idea of property. For example, when Ragusan Doge Johannes Dandulus confirms his friendship with the Serbian King Stefan Vladislav (September 1234–April 1235), he says that the King can freely enter and leave Dubrovnik (Ragusa) with “all his property” (ни добытъкъ твоємѣ всакомѣ; ни добытъкомъ имѣ; и съ добытъкомъ всакымѣ твоимѣ и внѣхъ добытъкомъ всакимѣ; А добитъкъ ере смо рекли дати).⁶ In the treaty from

1 See Đ. Tošić, “Dobitak”, in *LSSV*, pp. 160–161.

2 On the duty of *servant* (*sluga*), see Chapter 5, section 2.2.

3 Edited by N. Porčić, *SSA* 5 (2006), p. 84. On the personality of Dabiživ, see pp. 92–94.

4 Edited by S. Marjanović-Dušanić, *SSA* 4 (2005), p. 73.

5 Burr, “The Code of Stephan Dušan”, p. 212, Novaković, *Zakonik*, p. 60; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

6 In the Latin version of the document *dobitak* is translated as *habere* (*alio vestro habere, toto habere vestro*). Edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 135.

1282, King Stefan Uroš II Milutin says that the Ragusans (Dubrovčani) can “leave [Serbia if they do something wrong to the King] within three months with all their property” (ДА ИМЪ ЕСТ РОКЪ ЗА ТРИ МѢСЕЦЕ ДА СИ ИЗДИДУТЬ СЪ ВСѢМЪ СВОИМЪ ДОБИТЬКОМЪ).⁷ King Stefan Uroš I says, in the treaty from 23 August 1254, that if any Ragusan won a suit with a Serbian “let my judges deliver him his property” (ДА МЪ МОЕ СЪДЫЦЕ ИЗДАЮ ДОБИТЬКЪ).⁸

In several cases, Serbian legal sources differentiate between *živi dobitak*, literally “live gain”, “live asset”, i.e. cattle, livestock, and *mrtvi dobitak* (и ДОБИТ’КА ЖИВОГА И МР’ТВОГА), literally “dead or inanimate gain”, i.e. immovable things.⁹ Tsar Dušan in the general chrysobull presented to the monastery of Hilandar (1348) says that he gave the tenth part of “live gain” (i.e. cattle, livestock) to the monastery, that was in money terms 400 silver perpers (и приложис’мо ѡтъ всега ДОБИТ’КА ЖИВОГА ЦЮ СЕ НАХОДИ ОУ ЦАРЬСТВА МИ ДЕСЕТЬКЪ ВСАКО ГОДИЦЕ Ю ДА СИ ОУЗИМАЮ ЗА ТЪХ ДЕСЕТЬКЪ ВСАКО ГОДИЦЕ, НА ГЮРГЕВ ДЪНЬ ЛѢТНИИ Ю НОВОМЪ БРЪДЪ СРЕБРА ЗА ЧЕТИРИ ТИСОУЩА КРЪСТАТИИХЪ ПЕРПЕРЬ).¹⁰ However, article 144 of Dušan’s Law Code calls the whole property of an individual “his house and his cattle” (на нѣговеѡ коукою и на егове ДОБИТЬКЪ), where the word *kuća* (lit. “house”, “home”) could designate immovable property, and *dobitak* all movable things, not only cattle.¹¹

The term which most frequently designates all property is *imenije* or *imanije* = property, holding, estate, homestead (from verb *imeti* or *imati* = to have).¹² In Serbian legal documents *imanije*, as the object of property rights, is often opposed to the *glava* (lit. “head”), as the subject of legal acts (natural persons, individuals). That is clear from two treaties of Serbian monarchs with Dubrovnik (1349 and 1357) where the same formula has been repeated: “And that they [Ragusans] circulate within my Empire with their heads [as individuals] and their property ... freely, without any disturbance”¹³ (ДА ГРЕДЪ СВОИМИ ГЛАВАМИ, ИМАНИЕМЪ СВОИМЪ ... СВОБОДНО, БЕЗЪ ВСАКЕ ЗАБАВЪ ПО ЗЕМЛИ ЦАРЬСТВА МИ).¹⁴ Dušan’s Law Code uses the term *imanije* as well, designating all property

7 Mošin, Ćirković, and Sindik, *Zbornik*, p. 276.

8 Ibid., p. 213.

9 King Milutin’s charter to the Hilandar’s pyrgos (tower) in Chroussia (1313?–1316, before 26 July). Ibid., p. 441.

10 Edited by S. Mišić and M. Koprivica, *SSA* 14 (2015), p. 68.

11 Burr, “The Code of Stephan Dušan”, pp. 525–526; Novaković, *Zakonik*, p. 111; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

12 In modern Serbian *imanje* (имање).

13 The Serbian word is *zabava* (забава), meaning in modern Serbian *amusement, entertainment*. However, in mediaeval Serbian legal documents *zabava* means *disturbance, interference, nuisance*. See S. Bojanin, “Zabava”, in *LSSV*, p. 201.

14 Tsar Dušan’s treaty from 20 September 1349, edited by D. Ječmenica, *SSA* 11 (2012), p. 38; Tsar Uroš’s treaty from 25 April 1357, edited by M. Černova, *SSA* 12 (2013), p. 81.

(all movable and immovable things). Article 70, regulating the division of family estates, mentions “brothers or father or sons, or any other, independent by bread or property” (или брaтeн’цѣи, или вѣтъць вѣтъ сыновъ или инъ кто вѣдельнь хлѣбомъ и иманїемъ).¹⁵

2 Division of Things

Roman law had a very detailed division of things,¹⁶ but among the sources of Serbian mediaeval law, only one fragment in the *Syntagma* of Matheas Blastares mentions the Roman division between *res mobiles* and *res immobiles* (movable and immovable things). The text is an interpretation of Justinian’s *Novella* cxxxī, 13, which forbids bishops who had acquired movable or immovable property after ordination as a bishop from transferring them to their relatives (Отрицаемъ, рече, прѣподобиѣшимъ епископомъ ѣже по епископствѣ тѣмъ которымъ любо образомъ пришѣдша имѣнїа, движима или недвижима, въ свое сѣродники или къ инымъ, которымъ любо образомъ прѣносити).¹⁷ However, in the original Greek text of Justinian’s *Novella* and Matheas Blastares’ *Syntagma*, beside the division on movable and immovable things (πράγματα κινητὰ ἢ ἀκίνητα) we also find the idea of a selfmovable (αὐτοκίνητα) thing, which was omitted in the Serbian translation.¹⁸ Although the Serbian translators of the *Syntagma* did not mention selfmovable things, they were present in Serbian legal sources as *živi dobitak* (live gain, live asset, i.e. cattle, livestock). That is clear from the beginning of article 117 of Dušan’s Law Code: “If anything come to any man in the Tsar’s realm out of some city or other district which belonged to some other lord before the Tsar took that land or county” (Цю єсть комѣ прѣшло ѣ царевѣ землю, или изъ града, или и жѣпѣ коє до прїетїа господина цара догда тѣбѣ было царєво, нѣ же было инога господара).¹⁹

15 Burr, “The Code of Stephan Dušan”, p. 211; Novaković, *Zakonik*, p. 57; *Zakonik cara Stefana Dušana*, vol. III, p. 118. Cf. Taranovski, *Istorija*, vol. III, pp. 28–29.

16 Gaius, *Institutiones* II, 1–22; *Iust. Inst.* II, 1, 1–48 (*De rerum divisione*); D. I, 8, 1–11 (*De divisine rerum et qualitate*). Cf. A. Malenica, “Podele stvari i pojam ‘stvar’ u rimskoj pravnoj doktrini” (“Classification of Things and the Concept of a ‘Thing’ in Roman Legal Doctrine”), *ZRPFS* 40.1 (2006), pp. 19–51.

17 Edited by Novaković, p. 216.

18 Edited by Ralles and Potles, p. 207. Cf. *Cod. Iust.* VI, 61, 6; VII, 37, 2; VII, 37, 3; and IX, 13, 1, which mentions *res mobiles vel immobiles seu se moventes*.

19 Burr, “The Code of Stephan Dušan”, p. 519; Novaković, *Zakonik*, p. 90; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

Roman law recognized a division of things vested in private ownership (*res in nostro patrimonio*) and things not owned privately (*res extra nostrum patrimonium*).²⁰ Aelius Marcianus, a Roman lawyer of the early 3rd century AD, used for *res in nostro patrimonio* and *res extra nostrum patrimonium* the expressions *res in commercio* (things in trade) and *res extra commercium* (things out of trade),²¹ and his terminology prevailed into modern law. In Serbian mediaeval law we cannot find such a division, but the legal documents mention some objects that could be *res in commercio*. Those objects were mostly churches, built by natural persons (individuals)—noblemen and clergy, who were landlords and had hereditary estate (*baština*) over their manors. Churches on private estates were the property of their owners and could be things in trade (*res in commercio*). We shall quote several examples.

In the chrysobull presented to the monastery of Saint Archangels Michael and Gabriel near the city of Prizren (1348), Tsar Stefan Dušan confirms that the church, built on the manor of the nobleman family Vladojević, was their hereditary estate (да си држе въ мѣсто сѣгази оу бащиноу). As the church was a hereditary estate (*baština*) it could be an object of trade (*res in commercio*). So the Tsar, with the consent of Mladen Vladojević and his mother, not by force, changed the church for another church (И симь въбразомь замѣнихъ црковь Спаса оу Младѣна Влдојевиќа и оу матере ѿго ... ни хъ воломь и ни хъ хотѣниемь, а не нѣкою поуждѣю, замѣнихъ и дахъ замѣноу оу Охридѣ Ан'дричю црковь за црковь).²² Tsar Stefan Dušan bought a place called Livade and the church of Saint Nicholas on the peninsula of Athos and gave them as a present to the monastery of Hilandar (1 December 1347).²³ In Tsar Stefan Dušan's charter to the lesser lord (*vlasteličić*) Ivanko Probištitović (28 May 1350), the Serbian monarch says that Ivanko can freely dispose with the church of Saint John that he built on his estate. Ivanko and his children can sell the church, give it as a present or give it for the soul,²⁴ as they wish (внѣзи црковь кою си естъ създалъ Светаго Івана ... да си има и држи Иванко и негова дѣца до вѣка въ всако ѹтверждение и достоѣание царьско и свободоу чистоу. Како всакѹ кѹпеницѹ любви за дѹшоу одати) in Serbian mediaeval law corresponds to the capacity to make a will. See further Chapter 14, dedicated to the "Law of Wills and Succession".²⁵

20 *Modo videamus de rebus; quae vel in nostro patrimonio sunt vel extra nostrum patrimonium habentur* (Gaius, Inst. II, 1; *Iust. Inst.* II, 1, 1 praef.).

21 D. XX, 3, 2.

22 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 89.

23 Novaković, *Zakonski spomenici*, p. 417.

24 The formula "given for the soul" (за доушоу одати) in Serbian mediaeval law corresponds to the capacity to make a will. See further Chapter 14, dedicated to the "Law of Wills and Succession".

25 Edited by V. Aleksić, *SSA* 8 (2009), p. 73.

It seems that Serbian mediaeval law recognized a division between *res corporales* (physical, corporeal things, i.e. tangible objects) and *res incorporales* (non-physical, incorporeal things, i.e. right to which an economic value attaches).²⁶ In the charter presented to Saint George's monastery near the city of Skoplje (1300), King Stefan Uroš II Milutin says that he gave to the monastery the village of Kozarevo and the monastery of Saint John Chrysostom and Barovo and Vinsko with all hamlets, vineyards, fields, watermills and beast- and fish-hunting grounds, with enclosures,²⁷ and mountains and all the rights of those villages (И приложи карлиество ми село Козарево ... а въ немъ монастырь Светы Іуанъ Златоустычани, съ Баровомъ и съ Винскомъ и съ всеми заселки тѣми и съ Златоустычани, съ виногради, съ нивиемъ, съ водѣничиемъ, и съ ловищемъ рибнимъ и звѣрнимъ, съ забѣли и съ планиномъ и съ всеми правинами сѣль тѣхъ). The King adds that he gave to Saint George's monastery the village of Čereševljani as well, with all its property and all its rights (и съ всеми правинами).²⁸ King Dušan's charter presented to the monastery of Treskavac (1335) testifies that the object of trade was the church of Saint Nicholas in the village of Hlerine, sold by Vlach's bishop, with all men, vineyards, fields, and watermills, and with all regions and rights (Цръква оу Хлеринѣ светии Никола, цю продаде влашки пискоупъ, съ людymi, и съ виногради, и съ нивиемъ и съ водѣничиемъ и съ всею областію и правинами).²⁹ Almost the same words were used in Tsar Stefan Dušan's charter issued in favour of Karyes (Καρύες) Kellion in Holy Mountain (1348): beside the physical things the Tsar said that he gave all rights that the village of Kosoriće disposed (и съ всеми правинами села того).³⁰

The expression и съ всеми правинами ("and with all rights") was the translation of the Greek phrase μετὰ τῶν δικαίων καὶ προνομίων ("with all rights and

26 Gaius, *Institutiones* II, 12–14: *Quaedam praetera res corporales sunt, quaedam incorporales. Corporales hae sunt quae tangi possunt, velut fundus homo vestis aurum argentum et denique aliae res innumerabiles. Incorporales sunt quae tangi non possunt, qualia sunt ea quae iure consistunt, sicut hereditas, ususfructus, obligationes quoquo modo contractae* ("Again, things are either corporeal or incorporeal. Things corporeal are tangible, as land, a slave, clothing, gold, silver, and innumerable others. Things incorporeal are intangible; such as those which have an existence simply in law as inheritance, usufruct, obligation, however contracted"). English translation by I.E. Poste, *Iustiniani Institutiones* (Oxford 1904). Cf. *Iust. Inst.* II, 2, 1–2 (*De rebus incorporalibus*).

27 The Serbian word is *zabel* (забѣль), which is no longer used in the modern language. See M. Blagojević, "Zabel", in *LSSV*, p. 202.

28 Mošin, Ćirković, and Sindik, *Zbornik*, p. 321.

29 Novaković, *Zakonski spomenici*, p. 667.

30 Edited by D. Živojinović, *SSA* 7 (2008), p. 76.

privileges”) usual in Byzantine charters³¹ and adopted by composers of Serbian legal acts.³² This fact was already noticed by Russian scholar Fyodor Zigelj, although he thought that the expression *i s vssemi pravinami* (и съ всѣмми правинами) did not mean “with all rights”, but rather “with all accessory things” (*accessorium, res accessoria*), that which belong to the principal thing (*res principale*).³³

Serbian legal sources make a clear difference between the principal thing (*res principale*) and the accessory thing (*accessorium*), that which belongs to a

31 I shall quote several examples from the archives of Hilandar monastery: 1) June 1199, Byzantine Emperor Alexios III Angel confirms to the Serbian monk Sabba the property over the monastery of Hilandar καὶ τῶν ὅλων τούτου δικαίων καὶ προνομίων; 2) September 1265, John, Constantine and Michael Spartenos confirm gifts to the monastery of Hilandar, done by their father καὶ τοῖς αὐτῶν δικαίοις καὶ προνομίοις; 3) December 1304, Demetrios Philanthropenos cedes his goods Korakomone and tou Blachou in Holmyros, to the painter Michael Proeleusis, who has to build one *monydrion* dedicated to the Mother of God, καὶ πάντων τῶν δικαίων καὶ προνομίων αὐτῆς; 4) 5 August 1314, Demetrios Pyrros, his son-in-law and his son sell two plots of the vineyard in Ropalaia to the monastery of Hilandar with πάντων δικαίων καὶ προνομίων; 5) Theodore Mallokopos and his son sell two plots of the vineyard in Ropalaia to the monastery of Hilandar ὧν ἔχουσι πάντων δικαίων καὶ προνομίων. See *Archives de l'Athos xx, Actes de Chilandar I, dès origines à 1319*, ed. M. Živojinović, V. Kravari, and Ch. Giros (Paris 1998), no. 5, 24; no. 7, 22; no. 22, 5, 14, 32, 47; no. 31, 26; no. 32, 21. 1) In the charter of Byzantine Emperor Andronikos III Palaiologos (June 1321), recognizing immunity rights for the monastery of Saint Nicolas in Kamenikaia near Serres, founded by hieromonach Theodosios Mellissenos, we find the formula ἀλλὰ δὲ καὶ ἐτέρων πάντων δικαίων καὶ προνομίων; 2) August 1321, the nun Marina sells her property, situated in the city of Kaisaropolis, valued at 210 perpers, to the monks of the monastery of Hilandar, using the words μετὰ πάντων αὐτοῦ φημί τῶν δικαίων καὶ προνομίων παλαιῶν τὲ καὶ νέων; 3) September 1365, Byzantine Emperor John V Palaiologos, on the demand of Serbian Tsar Stefan Uroš, offers the village of Potolino with the neighbouring lands to the monks of Hilandar μεθ' ὧν ἔχει δικαίων καὶ προνομίων. See *Actes de l'Athos v, Actes de Chilandar, première partie, Actes grecs*, ed. L. Petit, BB, Приложение къ XVII тому, no. 1 (Санкт-Петербургъ 1911), no. 64, 16–17; no. 69, 47–48; no. 150, 18. Cf. M. Živojinović, “Strumički metoh Hilandara” (“Strumitza Manor of Hilandar”), ZRVI 45 (2008), pp. 205–221.

32 Stanojević, “Studije o srpskoj diplomatiji XX. Sastavljanje povelja” [Studies on Serbian Diplomacy XX. Composing of Charters], Glas SKA 157 (1933), p. 156.

33 Zigelj, *Zakonnik Stefana Dušana*, p. 198. His opinion was rejected by Taranovski, *Istorija*, vol. III, pp. 38–39, who proved that the expression *i s vssemi pravinami* means “with all rights”. Taranovski quoted King Stefan Uroš's chrysobull to the monastery of Saint Apostles Peter and Paul on the River Lim (1254–1263), where the word *pravine* was replaced with *pravila* (rules): Аще ли кто на каѣгда въ накое врѣме наваждениемъ и завистино днаволено конимъ вѣражомъ въсхоиеть поработити светуоу црьквѣ и прѣтворити прѣдадана мьномъ, или въ сѣлахъ или въ пладинахъ, или въ власяхъ, или въ добитыцяхъ, или въ ковилахъ, или въ землы и въ виноградахъ, правилахъ црьквынахъ. Taranovski used the edition of Novaković, *Zakonski spomenici*, p. 596. The new edition used in this text is that by Mošin, Čirković, and Sindik, *Zbornik*, p. 230.

principal thing, or is in connection with it.³⁴ As the principal thing the sources usually indicate a village, and beside it different accessory things were quoted (see abovementioned examples). In some documents, mountains appear as the principal thing. For example, in the chrysobull presented to the monastery of Žiča (1219–1220), King Stefan the First Crowned says that he gave to the church mountains (a long list with the name of the mountains) with all pastures for use in summertime and wintertime (А се планине ... съ вѣсми пашами зимь-ними и лѣтними).³⁵ In King Stefan Dušan's chrysobull, confirming the gifts of his nobleman Hrelja to the monastery of Hilandar (6 May 1332), the mountains Ograždevo and Draguljevo with all fields at the foot of the mountains and with all districts were mentioned (И планина Ограждено и Драгуљево и подьплавиньє съ всею властью).³⁶ However, in the charter of Tsar Stefan Uroš issued in favour of Ragusans (25 April 1357) we read a general formula: the Tsar gave them land and everything that could be found on it (даде имь царство ми и записа и дарова землю ... и все цю се вѣрѣта на тоизи земли, да си има и дрѣжи градъ Дубровникъ).³⁷

3 Ownership

Ownership is defined as a collection of rights to use and enjoy property, including the right to transmit it to others. According to the rules of Roman law, full ownership (*dominium*) gave the owner three important rights: a) *ius utendi*—the right to use the property; b) *ius fruendi*—the right to enjoy the fruits and profits of the property; and c) *ius abutendi*—the right to consume or destroy the property. However, the concept of ownership in feudal law is different: the ownership right is not unic, but rather divided. The title or property which the sovereign in feudal States is considered as possessing in all the lands of the kingdom, they being holden either immediately or mediately of him as lord paramount, was called the *dominium eminens*. The *dominium directum* (right of proper ownership) was the right of a superior or lord, as distinguished from

34 According to Gaius, D. XXXII, 8, 2: *Nam quae accessionum locum optinent, extinguuntur, cum principales res peremptae fuerint* ("For those things which occupy the place of accessions are extinguished when the principal property is destroyed"). English translation by A. Watson (Philadelphia PA 1985). Modern law has adopted a rule *accessorium sequitur principale* ("accessory follows its principal").

35 Mošin, Ćirković, and Sindik, *Zbornik*, p. 91.

36 Edited by V. Petrović, *SSA* 13 (2014), p. 7.

37 Edited by M.A. Černova, *SSA* 11 (2012), p. 94. See also S. Šarkić, "A 'Thing'—The Concept and Division in Serbian Mediaeval Law", *HZ* 14 (2017), pp. 47–53.

that of his vassal or tenant. The right of a vassal or tenant was *dominium utile* (useful or beneficial ownership): the usufruct, or right to the use and profits of the soil, as distinguished from the *dominium directum* or ownership of the soil itself.³⁸

In mediaeval Serbian law we can find two essential concepts regarding ownership: *baština* (hereditary estate) and *pronoia* (fief). *Baština* could belong to noblemen, to the Church or to villagers (*meropsi*). The hereditary estate of a nobleman was full ownership limited by military services (*vojevanje*) and paying of a special land-tax (*soće*). The sovereign could deprive the hereditary estate holder of his manor only in a case of high treason (see Chapter 4, section 3.3).

The hereditary estate belonging to the Church had none of the abovementioned burdens, so the sovereign's supreme property right (*dominium eminens*) was only theoretical. Serbian legal sources do not mention any confiscation of Church manors (see Chapter 4, section 1.1).

Villagers had dependent hereditary estates (*baština*), carrying certain feudal duties, so their *baština* was considered as a kind of *dominium utile* (see Chapter 5, section 1).

Pronoia was a kind of *dominium directum*, different from *baština*, because the transaction of *pronoia* was not allowed (see Chapter 4, section 1.3).

4 Acquisition of Ownership

Acquisition is the act of becoming the owner of certain property. According to mediaeval commentators or annotators of Roman law, modern jurists make difference between original and derivative acquisition of ownership.³⁹

38 Cf. *Black's Law Dictionary* (St. Paul MN 1990), pp. 486–487.

39 Roman jurists did not make such a division. For example, Gaius, *Institutiones*, II, 65, wrote: "Therefore, from what we have stated, it appears that certain property can be alienated by natural law; as for instance, that which is transferred by mere delivery, and that other property can be alienated by the civil law, as through sale, surrender in court, and usucaption, for these rights are peculiar to Roman citizens" (*Ergo ex his quae diximus apparet quaedam naturali iure alienari, qualia sunt ea quae traditione alienantur; quaedam civili, nam mancipationis et in iure cessionis et usucapionis ius proprium est civium Romanorum*). So, according to Gaius, property can be acquired either *iure naturali* (by natural law) or *iure civili* (by the law of Roman citizens, i.e. civil law). In Justinian's *Digest* property is acquired *iure civili* and *iure gentium* (by the law of nations). As *ius gentium* was the law which natural reason has established among all men, Roman lawyers often equalized it with *ius naturale*. D. XLI, 1, 1: *De aquirendo rerum dominium. Gaius libro secundo rerum cottidianarum sive aureorum. Quarundam rerum dominium nasciscimur*

Original acquisition is that by which a man secures a property in a thing which is not at the time he acquires it, and in its then existing condition, the property of any other individual. In Serbian mediaeval law it may result from capturing things from an enemy, finding a thing, occupation, accession, or usucapion (lapse of time, *usucapio*).

Article 132 of Dušan's Law Code says:

If anyone in the Imperial dominion buy anything from booty taken on foreign soil, it is free to him to buy that booty provided he do so not within the territories of my Empire, but on foreign soil. And if someone accuse him, saying: "That is mine", the dispute shall be settled before a jury according to the law, whether he bought it on foreign soil and is not a thief nor a receiver nor an abettor: and such let him hold as his own.

Цю кто коупи wt плена изъ тоугіе земліе, цю боудѣ плѣниено по царевѣ землі; да несть вол'нь коупити wt тогазіи плена, колико ѿ тѣхъни землі; ако ли га кто потвори говорѣ внозіі є мое, да га вправи порота по законуу, ере не коупиль оу тѣхъдон землі, а не моу ни татѣ, ни проводчїа, ни вѣстникъ, такози да си га има како свое.⁴⁰

As the Law Code clearly proscribes that the sale of the booty was a legal act, we can conclude that property could be acquire by looting as well. However, it remains unclear how an individual could lawfully acquire the booty. In the Serbian legal sources we have no information on that, but it is possible that some rules existed in customary law.⁴¹

On the finding of a thing speaks article 116 of Dušan's Law Code: "If any man find anything within my territory, let him not take it and say: 'I will return it if any man find out.' If any man take or seize annything, let him pay what a thief or

iure gentium, quod ratione naturali inter omnes homines peraeque servatur, quarundam iure civili, id est iure proprio civitatis nostrae ("Acquisition of Ownership of Things. Gaius, Common Matters or Golden Things, book 2: 'Of some things we acquire ownership under the law of nations which is observed, by natural reasons, among all men generally, of others under the civil law which is peculiar to our city'"). Cf. *Basilika* L, 1, ed. Scheltema, Van der Wal, and Holwerda.

40 Burr, "The Code of Stephan Dušan", p. 523; Novaković, *Zakonik*, p. 100; *Zakonik cara Stefana Dušana*, vol. III, p. 136.

41 Taranovski, *Istorija*, vol. III, p. 85. I do not think that in Serbia there existed the following rule, defined by Gaius, *Institutiones* IV, 16, that "whatever was taken from an enemy a man considered to be absolutely his own" (*quod maxime sua esse credebant quae ex hostibus cepissent*).

robber would pay. But whosoever finds anything while in the army in a foreign land, let him bring it to the Tsar or to a commander" (Кто цю наиде оу царевѣ земли, да не оузме тере да не рече врати кю, ако кто позна; ако ли похвати, или оузме, да плати цю татъ, или гоусаръ; а цю наиде оу тоугон земли на воинѣ, да вѣде и несе прѣд цара, и воеводѣ).⁴² So, a finder cannot take possession of found thing if it belongs to another person.⁴³ If he do so, he will be punished like a thief or a robber. According to Teodor Taranovski⁴⁴ article 116 abolished the Old Slavonic custom which says that the owner of the lost thing had to announce at the market-place that he had lost the thing. Only in that case could he freely take his object if he recognized it in the possession of someone who had found it. The finder of a thing had to pay a fine and return the object to the owner,⁴⁵ without using a special process of inquiry called *svod* (сводъ).⁴⁶ So, Dušan's Law Code was trying to stop the previous practice, which allowed the finder to keep with impunity the object, expecting that the owner will recognize it. That was the reason why the Code repeats the old formula "I will return it if any man find out", which could be used by a finder; by these words he has addressed his neighbours when he was taking the finding object to his home. However, Taranovski has noticed that article 116 does not say what the finder of a thing has "positively" to do. According to him,⁴⁷ this lacuna could be filled with article 134 of the Budva Statute, entitled *De cosa trovata* (On finding a thing).⁴⁸ It runs as follows:

42 Burr, "The Code of Stephan Dušan", p. 519; Novaković, *Zakonik*, p. 89; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

43 Ownership could be acquired only on so-called *res nullius* (the property of nobody). The rule was defined by Roman jurist Gaius, by the following words: "What presently belongs to no one becomes by natural reasons the property of first taker" (*Quod enim nullius est, id ratione naturali occupanti conceditur*). D. XLI, 1, 3.

44 Taranovski, *Istorija*, vol. III, pp. 85–86.

45 See articles 34 and 35 of the Russian statute-book from the 11th century called *Russkaya Pravda* (*Правда Русская* or *Правда Руская*, lit. "Russian Justice"), so-called "Vast (*Про-странная*) Version", *Памятники русского права* [Sources of Russian Law], ed. S.V. Yushkov, vol. I, *Pamyatniki prava Kievskogo gosudarstva, X–XII v.v.* [Legal Sources of Kievan Rus, X–XII Centuries], ed. A.A. Zimin (Moscow 1952), p. III.

46 *Svod* (from verb *svoditi* or *svesti* = to lead down, guide down, bring down) was the Old Slavonic custom which means a special process of inquiry in cases of disputed ownership and charges of theft, especially of livestock. The accused party was called upon to give an account of his possession of the animal, and from whom he had originally acquired it; that person was then sent for and interrogated, and so on, until the whole history of the animal was traced back, and the existence, or otherwise, of theft finally proved. For more details see Part 6.

47 Taranovski, *Istorija*, vol. III, p. 86.

48 Article 116 of Dušan's Law Code has a title *О ѡбрътели* ("On finding").

We order, if any individual finds somebody else's thing, he has to announce it through judicial assistants to the judges, and it must be proclaimed in the market-place that the thing was found. Whoever acts contrary and the thing be found in his possession, it will be treated as stolen and he will have to pay the fine.

Ordinemo, che se alcuna persona trovasse cosa strania, la debba far preconizar per il senicio et vataco avanti li giudici, et per la piazza cridar, tal cosi si attrovà. Chi facesse il contrario, et fosseli presa la cosa, le sia rappresentata per furto, et paghi la pena.⁴⁹

The old rule, concludes Taranovski, was replaced with the new one; the source could have been the more advanced legal system of the maritime towns, such as Budva.⁵⁰

Occupation (*occupatio*) is the acquisition of ownership by taking possession of a thing not previously owned, such as a wild animal, or a thing which has been abandoned by its owner.⁵¹ The most often means of occupation in mediaeval Serbia was the case when someone clears a forest, and after that the clearing belongs to him. Cleared land was called *laz* (ЛАЗЪ),⁵² and the verbs *trebiti* (ТРЕБИТИ), *rastrebiti* (РАЗТРЕБИТИ) and sometimes *rastežiti* (РАСТЕЖИТИ) were used for forest clearance. Serbian charters mention *laz* many times. For example, in King Uroš's chrysobull to the monastery of Saint Peter and Paul on the River Lim (1254–1263), *laz* was noted two times as a topographic unit (ЛЪЗЪ

49 Statuta Buduae, cap. 134.

50 Taranovski, *Istorija*, vol. III, p. 86. The opinion of Taranovski was accepted by Solovjev, in his latest work *Zakonik cara Stefana Dušana*, pp. 271–272. However, as Bujuklić, *Pravno uređenje srednjovekovne budvanske komune*, p. 119, note 326, remarks, the question is what was the source of article 134 of the Budva Statute. L. Margetić, *Srednjovjekovno hrvatsko pravo—stvarna prava* [Mediaeval Croatian Law—Law of Things] (Zagreb-Rijeka-Čakovec 1983), pp. 38sq., points out that the dispositions on finding of movable things were regulated in the same way by the statutes of many Istrian towns (today in Croatia), such as Umag, Dvigrad, Buje, Buzet, Oprtalj, Bal, Milj etc. The author says that the purpose of this procedure was that the finder, by his behaviour, makes known to everyone that he has no intention of keeping somebody else's thing, i.e. that he is not a thief. Further on, Margetić compares those dispositions with the rules of Roman law (D. XLVII, 2, 43 and *Sabinus, Libri iuris civilis secundo ap. Aul Gell.* XI, 18, 21).

51 According to Gaius, D. XLI, 1, 1: "So all animals taken on land, sea, or in the air, that is, wild beasts, birds, and fish, become the property of those who take them" (*Omnia igitur animalia, quae terra mari caelo capiuntur, id est ferae bestiae et volucres pisces, capientium fiunt*).

52 The word *laz* is obsolete today. In modern Serbian the term *krčevina* (крчевина) is in use. See R. Mihaljčić, "Laz", in *LSSV*, pp. 360–361.

границе оу границу пры церю наконь лаза посрядя Срьныака ... вть границе оу границу медю лазома на Белеи плочы на Жывицю).⁵³ Tsar Dušan, in his charter in favour of Karyes Kellion on Holy Mountain (1348), says that he gave to the Kellion the village of Kosoriće, with all lands and rights, including clearings (и с лэзи).⁵⁴ However, King Stefan Dečanski's charter to the Episcopacy of Prizren (April 1326) orders that church villagers have to clear the forests, as much they can, but the clearing does not belong to them, but rather to the church (и колико не оузмож'но людемь црьковнымь да си чине лэзе, и все цю не к'то чиниль лэзе на нихь земли да сие има светага црькви тако и ино нивие црьковно).⁵⁵ Besides that, monastery serfs had to ask their lord for permission to acquire land by clearing, as the charter of Tsar Dušan and his son King Uroš presented to Jacob, Metropolitan of Serres, testifies: И никто безъ хот'вниа митрополитова да не треби лэза на земли на црьков'нои.⁵⁶

German miners ("Saxons", *Sasi*), who were engaged in mining and metalurgy, had cleared forests and squatted in the same way as the original Serbs. Dušan was determinated to stop this (article 123 of the Code), though at the same time allow them such timber as they needed for fuel or construction work (see Chapter 7, section 2).

Accession (*accessio*) is a general term for the acquisition of ownership by joining property to or merging it with something already owned by the acquirer.⁵⁷ In mediaeval Serbian law, accession appears only as a right to acquire the fruits of land: if someone sows or plants something on the owner's land, without agreement with the owner of the field, all fruits will belong to the owner of the land. This is clear from one fragment from King Milutin's charter presented to the monastery of Saint George, near Skoplje: "If someone, without a blessing of a hegoumenos, ploughs up or plants something on the church's land, let him pay 21 perpers, and grain and fruits will take the church" (Ако ли безъ игоумнова благословлєнїа нивоу поуре или врьть оу'ини на црьковнои земли да плати оу цариноу Ёл. перьперь, а врьть и жито да оузме црьква).⁵⁸ In Tsar Dušan's treaty with Dubrovnik (20 September 1349), we read as follows: "If they [Ragusans] took a piece of my Imperial land, out of boundaries that existed in the time of my father and my forefather, the Sainted King, and if they even plant vineyards on that land, they have to return all to me" (И цю бѣдѣ прѣдѣли землю

53 Mošin, Ćirković, and Sindik, *Zbornik*, p. 229.

54 Edited by D. Živojinović, *SSA* 7 (2008), p. 63.

55 Edited by S. Mišić, *SSA* 8 (2009), p. 16.

56 Edited by G. Bojković, *SSA* 15 (2016), p. 94.

57 Cf. Gaius, *Institutiones* II, 72–75, 77.

58 Mošin, Ćirković, and Sindik, *Zbornik*, p. 327.

царьства ми и прѣз мегю коѡа кѣтъ била мегѡа Ѹ родителѡа и прародителѡа царьства ми, свѣтаго крѡлаѡа, ако бѣдѣ и винограде по нѡи насадили прѣз мегю в'се да ми повратѣ).⁵⁹ This means that the owner of the land acquires ownership not only of the fruits, which are an accession to the principal thing, but on the whole farmland. The same rule could be found in article 25 of the so-called “Justinian’s Law”: “If someone sows somebody else’s field, without enquiry, let him stay without seeds and without ploughing” (Аще кто посѣетъ чюждоу нивоу безъ оупроса, да кѣст лих и сѣмена и ѡранѡа).⁶⁰ The influence of Byzantine law is evident.

Usucapion (*usucapio*) is the acquisition of ownership by possession of property for a specified period of time and under certain conditions, for example, that the possession was in good faith. In Serbian mediaeval law only the Church could acquire ownership by lapse of time (*usucapio*). The evidence for this is given to us by Saint George’s charter:

Everything that could be found within the abovementioned boundaries, either someone’s hereditary estate, or estate aquired by purchase, or vineyard, or mill, or field, or mowed hay, or gardens, or orchard, or water-mills; who did not initiate return of property under hegoumenos Isaac and did not terminate it under archimandrite⁶¹ Nikodem, after the departure of Nikodem, nobody can demand the property from the church of Saint George.

Уто се вѡрѣтаѣтъ вноутрь мегѣ вишеписанне, или чюѡа годѣ боудѣ бѡциѡа, или коуплѡеница, или винограде, или млинѣ, или нивѡа, или сѣвнокосѣ, или перивѡаль, или врьтъ, или водоваге, кто нѣстъ ѡтприль при игоумене Исацѣ и Ѹзель и при архимѡудритѣ Никодимѣ, по одѣшѣсти Никодимѡвѣ, никто да не оузицѣтъ црькви свѣтаго Геѡргѡа.⁶²

This means that the Church took possession of everyone’s estate by lapse of time, if the owner did not ask for the return of his domain, which was in a condition of falling into disuse, in a required term. The property rights of those

59 Edited by D. Ječmenica, *SSA II* (2012), p. 40.

60 Edited by Marković, p. 59.

61 Archimandrite (ἀρχιμανδρίτης, fem. ἀρχιμανδρίτισσα, lit. “chief of a sheepfold”), a monastic term with two principal meanings: 1) in the early period of monasticism (4th–6th centuries) the term is a common equivalent of *hegoumenos*, the superior of a monastery; 2) from the 6th century it began to be used for the chief of a region or urban federation of monasteries, akin to an exarch or protos.

62 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 321–322.

owners became obsolete, and the Church acquired the ownership by usucapion. In the presented example, the legal proceedings for return of property had to be activated while Isaac was hegoumenos, and terminate while Nikodem was archimandrite. After Nikodem's departure, the right to return the estate became obsolete. On the contrary, property rights of the Church were never obsolescent, as we can see from the text of Saint George's charter, as well: "And everywhere, where we can found a church villager, and field, and vineyard, and horse, or any gain [i.e. property], live or dead [i.e. cattle and immovable things], it has to be returned [to the church], and let there be no obsolescence" (И ГДЕ СЕ УВЕРЬТА УЛОВЬКЪ ЦРЬКОВНЫ, И НИВА, И ВИНОВАДА, И КОНЬ, И КОИ ЛЮБО ДОБИТЬКЪ ИЛИ ЖИВЪ ИЛИ МРЬТВЪ, ДА СЕ ВРАКТА, ДА МОУ НЪНЕ СТАРИНЕ).⁶³

Derivative acquisition refers to those acquisitions procured from others. We shall speak on them in the following chapters.

5 Rights over the Property of Another (*Iura in re aliena*)

In some cases a person owned property, but his rights over such a property might be limited. The most important rights over another's property, mentioned by Serbian legal sources, are *servitudes*, *pledge* and *emphyteusis*.

Servitudes (*servitudes*, δουλεία, ραβοуѣ) was said to exist where X possessed rights *in rem* over the property of Y. According to the interpretations of Roman jurists, servitudes might be praedial or personal, and praedial servitudes could be rustic (*iura praediorum rusticorum*) or urban (*iura praediorum urbanorum*). Praedial servitudes were rights over immovables. These rights were exerted by the owner of a *praedium dominans* (dominant tenement) over a *praedium serviens* (servient tenement). Such servitudes were of two types: rural or rustic and urban. Praedial servitudes were held by virtue of the ownership of a house or land; personal servitudes did not depend on such ownership. The most important personal servitudes were: *ususfructus*, *usus*, *operae servorum vel animalium*, *habilitatio*.⁶⁴

63 Ibid., p. 327. See S. Šarkić, "Originalni načini sticanja svojine u srednjovekovnom srpskom pravu" ["Original Acquisition of Ownership in Serbian Mediaeval Law"], in *Vizantijski svet na Balkanu, knjiga II* [Byzantine World in the Balkans, Volume II] (Belgrade 2012), pp. 417–424.

64 D. VII, 1–9; XXXIII, 2–3; VIII, 1–6; *Iust. Institutiones*, II, 3–5; *Codex Iustinianus*, III, 33–34; Gaius, *Institutiones*, II; Pauli *Sententiae* I, 17; Ulpiani *Regularum Liber singularis*, XV, 1; XIX, 1.

The Roman term *servitudes* was translated in Byzantine legal sources as δουλεία, although this word means slavery and hard (slavish) work, as well.⁶⁵ Redactors of Serbian legal miscellanies used the word *rabota* (РАБОТА), which also has different meanings.⁶⁶

The rules on servitudes penetrated into Serbian law at the beginning of the 13th century, when Saint Sabba incorporated in his *Nomokanon* the whole *Procheiron*. Chapter 38 of the *Procheiron*, under the title “On novelties” (Περὶ καινοτομιῶν), contains different provisions on servitudes, mixed with administrative rules on building new houses.⁶⁷ For this reason, the chapter was entitled by Serbian translators of the *Procheiron* as “On building of new houses, reconstruction of the old and other things” (О ЗДАНИИ НОВЫХЪ ДОМОВЪ, И О ПОСТАВЪ-ЛЕНІИ ВЕТЪХЫХЪ, И ОННѢХЪ ВЪЩЕХЪ).⁶⁸ From the 64 provisions in Chapter 38 of the *Procheiron*, Matheas Blastares took in his *Syntagma* only 18, and created a short Chapter K-3, under the same title “On novelties” (Περὶ καινοτομιῶν, О НОВОТВОРЕНІХЪ in Serbian translation).⁶⁹ It contains, beside different decrees and prohibitions by administrative authorities, some urban servitudes (РАБОТЕ) that could be instituted and changed by special agreements (συμφώνον, СЪГЛАСИЕ). These are the following rules:

- A house in a town (e.g. Constantinople) may not screen the view to the sea.⁷⁰ This is a very well known urban servitude, called by Roman iurists *ne luminibus, ne prospectui officatur*, or the shorter *servitus prospectus*—“right to light” (δουλεία ἀπόψεως, РАБОТА ОТЬ ВИДѢНІА). However, the stated prohibition does not refer to gardens, if the distance between the buildings is larger than a hundred feet (ἐὰν δὲ ῥ' ποδῶν ἐν μέσῳ τῶν δύο οἰκῶν εἴη διάστημα, ΛΙΜΕ ΛΗ ΓΕ ΣΤΟΜΨ ΝΟΓΑΜΨ ΜΓΒЖДОУ ДВѢТМА ΧΡΑΜΟΜΑ ΚΕΤΨ ΡΑΣΤΟΙΑΝΙΕ).⁷¹

65 See M.Th. Fögen, “Das Lexicon zur Hexabiblos aucta”, in *FBR, Fontes minores VIII, Lexica iuridica byzantina*, ed. L. Burgmann, M.Th. Fögen, R. Meijering, and B.H. Stolte (Frankfurt am Main 1990), p. 171: Δουλεία ἐστὶν ἐθνικοῦ νόμου διατύπωσις. The definition is the translation of Roman juristconsult Florentinus, who wrote: *Servitus est constitutio iuris gentium* (D. I, 5,4). See also Y. Vin, “Ponyatie ‘ΔΟΥΛΕΙΑ’ kak sociokulturniy koncept v reprezentacii vizantijskih aktov” [“The Notion ‘ΔΟΥΛΕΙΑ’ as a Sociocultural Concept in Presentation of Byzantine Acts”], *Science Journal of Volgograd State University* 22.5 (2017), pp. 149–161. Cf. Chapter 5, section 3.

66 See M. Blagojević, “Rabote velike i male”, in *LSSV*, p. 609. Among the different meanings of the term *rabote*, the author does not mention servitudes.

67 Zepos, *Ius Graecoromanum*, vol. II, pp. 206–216.

68 N. Dučić, *Književni radovi 4* (Belgrade 1895), pp. 380–397; Petrović, *Zakonopravilo ili Nomokanon Svetoga Save*, pp. 315b–321b.

69 Greek text edited by Ralles and Potles, pp. 312–314; Serbian text edited by Novaković, pp. 330–332.

70 *Procheiron* XXXVIII, 5, Zepos, vol. II, p. 206 = Harmenopouli *Hexabiblos* II, 4, 46; *Syntagma* K-3, 4, ed. Ralles and Potles, p. 312; ed. Novaković, p. 331.

71 Ibid.

- It is forbidden to let smoke out of stoves, except if someone disposes a special right to do that (εἰ μὴ ἄρα δίκαιον εἶχεν ἐκεῖσε τὸν καπνὸν εἰσπέμπειν; **РАЗВѢ ОУБО АЦЕ ПРАВИНОУ ИМѢЛЫЄСТЬ ТАМО ДЫМЪ ИСПΟΥЩАТИ**).⁷²
- Nobody can throw trash under a neighbour's wall, except if somebody disposes of a corresponding servitude (Οὐδεὶς δύναται κόπρον πλησίον τοῦ ἄλλοτρίου τοίχου ρίπτειν, εἰ μὴ τοιαύτην ἔχει δουλείαν; **НИКТОЖЕ МОЖЕТЪ ГНЮИ БЛИЗЪ ТОУЖДЕИ СТѢНЫ ПОМѢТАТИ, РАЗВѢ АЦЕ ТАΚΟΒΟΥ ИМАТЬ РАΒΟΤΟΥ**).⁷³
- On the occasion of building a new house, it was forbidden to brick up a window to a neighbour, except if the agreement instituted a corresponding servitude (εἰ μὴ ἄρα δουλείαν ἔχοι κατὰ συμφυγίαν; **РАЗВѢ АЦЕ РАΒΟΤΟΥ ИМАТЬ ПО СЫΓΛΑΣИЮ**).⁷⁴

Among rural or rustic servitudes, Matheas Blastares mentioned only two rules. He classified them into a Chapter H-8, under the title “On pasture” (Περὶ νομῆς, **Ο ΠΑΣΤΕΥΣ**). 1) If someone has a right to water (*aquaeductus*, leading water in pipes, or in stone channels) or a right of pasture of sheep on another man's land (*servitus pecoris pascendi*), he can raise a hut on that land (‘Ο ἔχων δουλείαν τοῦ πατίζειν καὶ βόσκειν ἐν τῷ ἀγρῷ σου θρέμματα, δύναται τοῦ ἐν αὐτῷ ποιεῖν καλύβην, **ИМѢИЕИ РАΒΟΤΟΥ ИЖЕ НАΠΑΙΑТИ И ПΑΣТИ НА СЕЛѢ ТВОИЕМЪ ОВЦЕ, МОЖЕТЪ СТЕЖАТИ РАΒΟΤΟΥ ИЖЕ ВЪ ИЕМЪ ТВОРИТИ КОУЦЮ**). 2) If someone, with the knowledge of the owner, leads water over another man's land, after three years he acquires this servitude, and the owner of the land cannot disturb him (‘Ο δι’ ἄλλοτρίου ἀγροῦ ἔλκων ὕδωρ, εἰδότος τοῦ δεσπότη τοῦ ἀγροῦ, κτᾶται κατὰ τοῦ ἀγροῦ δουλείαν, ἐν τῷ νενομισμένῳ τριετίας χρόνῳ, μὴ κωλύσαντος αὐτὸν τοῦ δεσπότη τοῦ ἀγροῦ, **ИЖЕ ПО ТΟΥЖДЕМОУ СЕΛΟΥ ВЕДЫ ВОΔΟΥ, ВЕΔΟΥЦЮ ГОСПОДИНОУ СЕΛΑ, СТЕЖАВАИЕТЪ НА СЕЛѢ РАΒΟΤΟΥ ВЪ ОΥЗАΚΟΝΗΕΝНОМЪ ТРИΛѢΤІА ВРѢМЕНИ, НЕ ВЪЗБРАННИШЮУ ІЕМОУ ГОСПОДИНОУ СЕΛΑ**).⁷⁵

Serbian legal sources mention only a few rural servitudes: right to water (*aquaeductus*), right to cut trees (*silva caedua*), right to watering one's cattle

72 *Procheiron* XXXVIII, 18, Zepos, vol. II, p. 208 = D. VIII, 5, 8, 5; *Ulpianus libro septimo decimo ad edictum: ... Aristo Cerellio Vitali respondit non putare se ex taberna casiarum fumum in superiora aedificia iure immitti posse, nisi ei rei servitutem talem admittit*; Syntagma K-3, 12, ed. Ralles and Potles, p. 313; ed. Novaković, p. 332.

73 Syntagma K-3, 14, ed. Ralles and Potles, p. 314; ed. Novaković, p. 332; *Procheiron* XXXVIII, 22, Zepos, vol. II, p. 209 = D. VIII, 5, 17, 2. It is a case of *servitus sterquilini* or *latrinae sive sterculini* (“right to have a dung heap against a neighbour's wall”) of Roman law.

74 *Procheiron* XXXVIII, 4, Zepos, vol. II, p. 206; Syntagma K-3, 2, ed. Ralles and Potles, p. 312; ed. Novaković, p. 330. This question was minutely regulated by a law from the reign of Emperor Zeno, without any mentioning of promulgation year (so, between 474 and 491). See *Cod. Iust.* VIII, 10, 12 in the chapter under the title *De aedificiis privatis*.

75 Syntagma H-8, ed. Ralles and Potles, p. 401; ed. Novaković, p. 422. The rules were taken from *Basiliika* LVIII, 7, 2 = *Cod. Iust.* III, 34, 2.

on another's land (*pecoris ad aquam apulsus*), right of way (*iter*), right to drive a carriage or animal (*actus*) and right of pasture (*pecoris pascendi*). Among personal servitudes we can find only *ususfructus* (a right to use and enjoy the fruits of another's property) and *usus* (use—a usufruct, but without a right to take the fruits).⁷⁶

King Milutin's charter to the monastery of Saint George mentions the right to water (*aquaeductus*, ВОДОВАЦИНА, ВОДОВАЖДА, ВОДОВАГЕ, ВОДОВАГЕ). The text says that everyone who leads water from the church's place called "head" has to pay two dinars to the church. If someone leads water without the permission of the hegoumenos, he has to pay 12 perpers to the King's treasury and double to the church. And if someone leads water with the consent of the hegoumenos, he has to pay three perpers (И КТО ВАДИ ВОДОМЪ КОЯ СЕ ИЗВОДИ УТ ЦРЬКОВНА МѢСТА ГЛАВЕ, ДА ПОДАСТЬ ЦРЬКВИ УТ РАЛА КЪВ'ЛЪ ВОДОВАЦИНОУ, И УТ ВРЪТА .В. ДИНАРА. АКО ЛИ БЕЗЪ ИГОУМНОВА БЛАГОСЛОВЛЕНИЯ ПОВЕДЕ КТО УТ ЦРЬКОВНЕ ГЛАВЕ ВОДОУ ДА ПЛАТИ .ВІ. ПЕРЬПЕРЬ ОУ ЦАРИНОУ, А ЦРЬКВИ ДВОИНОУ ДА ДАСТЬ. АКО ЛИ СЪ ОУПРОСОМЪ ВОДОУ ПОВЕДЕ А ВОДОВАЦИНОУ ОУДРЖИ, ДА ПЛАТИ .Г. ПЕРЬПЕРЬ).⁷⁷

Cutting of trees was mentioned in the same charter: "He who cuts trees on the mountains belonging to the Church has to give every fourth tree to the church. If someone cuts without a permission of the hegoumenos, he has to pay 12 perpers to the King, and the Church will take him every cut down tree" (И КТО ЛѢСЪ СѢЧЕ ИЛИ ДРЪВА ОУ ЦРЬКОВНОМЪ БРЪДѢ, ДА ДАЕ ЦРЬКВИ ЧЕТВЕРТО ДРЪВО. АКО ЛИ БЕЗОУ ИГОУМНОВА БЛАГОСЛОВЛЕНИЯ СѢЧЕ ЦЮ ЛЮБО ДА ПЛАТИ .ВІ. ПЕРЬПЕРЬ, А ЦРЬКВИ ЛѢСЪ ВЪСЪ ДА МОУ ОУЗМЕ).⁷⁸

The right to watering one's cattle on another's land (*pecoris ad aquam apulsus*) can be found in Tsar Dušan's chrysobull to the monastery of Saint Archangels Michael and Gabriel. The text says that the Emperor did not deprive the hamlet of Golubovci of servitude to watering cattle (А напоища Голоубов'цем не ѿнесмо оу Боудисланихъ коукъ).⁷⁹ The same chrysobull gives to the village of Lubižnjane the right to drive a carriage or animal (*actus*) and the

76 Taranovski, *Istorija*, vol. III, p. 98.

77 Mošin, Ćirković, and Sindik, *Zbornik*, p. 237. Right of leading water over another's land was mentioned in one Byzantine document from the year 1373: Anna Palailogina, with the consent of her consort, sells her estate called Marianna in Kalamaii, which was part of her dowry, to the monastery of Docheiariou. The document says that all rights that the seller used will be transferred to the buyer, including servitude of *aquaeductus*, probably from a river. *Actes de Docheiariou*, ed. N. Oikonomidès, Archives de l'Athos, XIII (Paris 1984), no. 42, pp. 235–239. Cf. L. Bénou, *Pour une nouvelle histoire du droit byzantin, Théorie et pratique juridiques au xive siècle* (Paris 2011), p. 253, n. 56.

78 Mošin, Ćirković, and Sindik, *Zbornik*, p. 237.

79 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 103.

right to put cattle to graze on another man's land (*ius pascendi*): и долѣ опетѣ до мегіе Коришкє и до Светога Петра, да си имаю Любиж'нїанє съ Скоробици како соу и прѣгїе пасли.⁸⁰

The right of way or right to pass (*servitus itineris ac viae*) was mentioned in a sale contract (*emptio venditio*) in which a certain Dobroslava with her children sells her house in the city of Prizren to a certain Mano, brother of Dragitza. In the text of the contract we read that the road, leading to the house, will be free for everyone (Пѣтъ двора тога свободьнь с коловозомь).⁸¹

The right to put cattle to graze on pastures belonging to the counties (*župa*), was regulated by article 74 of Dušan's Law Code: "Let village pasture with village, where one village, there also the other. Only legal enclosure and meadows may not be grazed" (Село селом да пасє; коудѣ едно село тоудѣ и дрого; развѣ забѣль законитыхъ и ливадъ законитыхъ никто да не пасє).⁸² Article 75 says similarly: "No district may graze its stock within another district. And if in the district there be a separate village which belongs to any lord, or to my Majesty, or is a Church village, or belongs to a gentleman, that village shall graze with the rest of the county district and no man shall forbid it to so graze" (Жоупа жоупѣ да не попаса довит'комь ница; ако ли се нанде едно село љ този жѣпѣ, оу кога любо властѣлина, или кєтъ царства ми, или кєтъ црьковно село, или властѣличика; вномѣзи селѣ никто да не забрани пасти; да пасє коудѣ и жоупа).⁸³ It seems that the "legal enclosures and meadows" (забѣль законитыхъ и ливадъ законитыхъ) were Crown lands and excluded, but the rest of the pasture land in the county was common land for grazing of all the villages in the county, regardless of ownership.

Among personal servitudes, a right to use another's property (*usus, usus-fructus*) is found mostly in charters presented in favour of churches and monasteries: giving land to monasteries or churches, the monarch or any other individual instituted a lifelong use for a certain natural person, expressing that with the terms "that he uses lifelong" (да си облада до нєгова живота), "let him store it until his death, and after his death let it belong to the Church" (свое все да дръжи до смрьти, а по смрьти кєго да кєтъ црьковно), "until the end of his life" (іако до живота свога), and similar.⁸⁴ We will quote two interest-

80 Ibid., p. 91.

81 Edited by Bubalo, *Srpski nomici*, p. 250.

82 Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 59; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

83 Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 60; *Zakonik cara Stefana Dušana*, vol. III, pp. 118, 120.

84 Cf. Taranovski, *Istorija*, vol. III, pp. 96–98.

ing examples. 1) King Milutin gave as a present to a certain squire's (named Milša) wife named Radoslava the monastery of Saint George and a village of Ulitišta, and the gift was confirmed by the Kings Stefan Dečanski and Dušan. However, King Dušan, for unknown reasons, decided between 1336 and 1337 to give Radoslava's estate to the monastery of Hilandar, and he left to the squire's wife only a right to use and enjoy the fruits of her property, but her descendants were deprived of the right of succession (И да се храни Радослава, Милшина жена, до не сьмр'ти, а по не сьмр'ти да не вблада мѣстѡмъ тѣмъ ни сынъ, ни дьцѣти, ни кто ѡт рода).⁸⁵ 2) In the sale contract by which a certain Radoslava Mirković sells her house in Trepča⁸⁶ to the monastery of Saint Paul (19 January 1438), a right of use was established: Radoslava would keep a small room in the house, where she and her sister could find shelter until the end of their lives (А за мога живота ... да имамъ ѡт кѡѣке ед'нь кѣларъ гдѣ кю прибѣгнѡтъ с' сестромъ).⁸⁷ In this case a right of lifelong use of a small room was instituted by a sale contract.⁸⁸

Pledge (*pignus*, ἐνέχυρον, залогъ) is a transfer of possession under which the creditor obtained possession of the property pledged, but ownership remained with the debtor. The expression was sometimes used as a general one for any form of real security, including *pignus* and *hypotheca*.⁸⁹ The pledge could be negotiated by contract or be determined by law. All saleable property could serve as a pledge. In the place of single objects, the entire current and future property of the debtor could also be pledged.

Byzantine legal miscellanies always put together the rules on pledge in the same chapter with provisions on loans.⁹⁰ Chapter 10 of *Ecloga* has a title Περί

85 "Povelja kralja Stefana Dušana Hilandaru 1336/1337" ["King Stefan Dušan's Charter to Hilandar 1336/1337"], ed. S. Marjanović-Dušanić and T. Subotin-Golubović, *SSA* 9 (2010), p. 65.

86 The Trepča Mines (Serbian Cyrillic Рудник Тренча, Albanian *Miniera e Trepçës*) is a large industrial complex in Kosovo, located 9 km northeast of Kosovska Mitrovitza. It is one of Europe's largest lead-zinc and silver ore mines. The enterprise known as Trepča was a conglomerate of 40 mines and factories. The oldest mine called *Stari Trg* (Стару Трѣ = "The Old Market-town") is one of the rare mines which was operational from the Roman period. Saxon miners, who came to Serbia in the 13th century, built settlements and churches around the mines.

87 Bubalo, *Srpski nomici*, p. 260.

88 See S. Šarkić, "Službenosti u vizantijskom i srpskom srednjovekovnom pravu" ["Servitudes in Byzantine and Serbian Mediaeval Law"], *ZRVI* 50.2 (2013), pp. 1003–1012.

89 Cf. D. XIII, 7, *De pigneraticia actione vel contra*.

90 Although modern legal science treats pledge as a part of the law of property and loan as a real contract and a part of the law of obligations.

δανείου ἐγγράφου καὶ ἀγράφου καὶ τῶν διδομένων ἐπ' αὐτοῖς ἐνεχύρων ("On literal and unliteral loans and for them given pledges");⁹¹ Chapter 16 of the *Procheiron* with a title Περί δανείου καὶ ἐνεχύρου ("On loan and pledge"); and the Chapter 28 of the *Epanagoge* entitled Περί χρέους καὶ ἐνεχύρων ("On loans and pledges").⁹² That was the reason why Matheas Blastares included in his *Syntagma* Chapter Δ-2 under the title "On lenders and loan and pledges" (in the Greek text Περί δανειστών, καὶ δανείου, καὶ ἐνεχύρων⁹³ and in the Serbian translation О зајемни-цаѣхъ и заимѣ и заложѣхъ).⁹⁴ The rules concerning pledge are the following.

1) "The fruits from property pledged will be added up to the debt and if the whole amount of debt was that way discharged, the pledge will be given back to the pledgor. If the value of the fruits is bigger than the debt, any surplus has to be returned" (Οἱ ἐκ τοῦ ἐνεχύρου ληφθέντες καρποὶ ψηφίζονται εἰς τὸ χρέος· καὶ ἐὰν ἱκανοὶ γένωνται πρὸς τὸ ὅλον χρέος, λύεται ἡ ἀγωγὴ, καὶ ἀποδίδεται τὸ ἐνέχυρον· εἰ δὲ καὶ πλείονές εἰσι τοῦ χρέους οἱ καρποὶ, ἀποδίδονται οἱ περιττεύοντες, Иже отъ залога приѣти бывше плодове пригнѣтаются се въ долгъ, и аще довол'ны бѹдо-уть къ в'сему долгу, раздѣшѣются се вина и въздаваются се залогъ; аще ли же и множиши соутъ долги плодове, въздаваются се излишѣстѹюшѣи).⁹⁵ 2) "If the lender, not by his own negligence (*culpa*),⁹⁶ has lost property pledged, he will be not responsible, but he has to explain what happened to him" (Ἐὰν ὁ δανειστὴς μὴ παρ' ἰδίαν αἰτίαν ἀπώλεση τὸ ἐνέχυρον, οὐκ ἐγκαλεῖται· χρὴ δὲ αὐτὸν ἀποδείξει, ὅτι ἀπώλεσε, Аще заимовавши не отъ своѣе вины погубитъ залогу, несоудимъ ѣсть; подобается же ѣмоу оуказати іако погуби).⁹⁷ 3) "If the lender explains how he has lost property pledged, he acquires a right to request a payment of a debt" (τὰ γὰρ τυχηρὰ οὐ κινδυνεύεται τῷ δανειστῇ, ἀλλὰ δήνασται κατὰ τύχην ἀπώλεσας τὸ πρᾶγμα, ἀπαιτεῖν τὸ αὐτῷ κεχρεωστημένον, приключишасѣа бо не бѣдѣстѹюшѣи заимовав'шому, нь можетъ по прилог'у погубивъ вѣштѣ истезати должное).⁹⁸ "If the parties to the contract had an agreement that the loss of the pledge absolves the debtor from responsibility, that becomes effective" (εἰ δὲ μεταξύ τῶν συναλλασσόντων ἤρεσεν, ἵνα ἡ ἀπώλεια τῶν ἐνεχύρων ἐλευ-

91 *Ecloga, das Gesetzbuch Leons III. und Konstantinos' V.*, ed. L. Burgmann, FBR, Band 10 (Frankfurt am Main 1983), p. 204.

92 Zepos, vol. II, pp. 155 and 320.

93 Edited by Ralles and Potles, p. 204.

94 Edited by Novaković, p. 214.

95 Ed. Ralles and Potles, p. 205; ed. Novaković, p. 215. Cf. *Procheiron* XVI, 3, ed. Zepos, vol. II, p. 155.

96 It could be a case of gross fault or neglect, *culpa lata* of Roman law.

97 Ed. Ralles and Potles, p. 205; ed. Novaković, p. 215. Cf. *Procheiron* XVI, 5, ed. Zepos, vol. II, pp. 155–156.

98 Ed. Ralles and Potles, p. 205; ed. Novaković, p. 215.

θερώσῃ τὸν χρεώστην, τοῦτο ἰσχύει, ἀλλὰ καὶ ποὺ εἰς τὴν ἀντιλήψιν αὐτοῦ ἐκ τῆς ἐκείνου
 βύτης καὶ τοῦ ἀποδοῦναι τὴν ἀντιλήψιν, καὶ ἐκ τῆς ἐκείνου ἐστὶν).⁹⁹

The so-called “Justinian’s Law” contains two articles concerning the pledge. Article 26, under the title “On pledges” (Ὁ Ζαλογαχὴ) says:

If someone gives a pledge and tells [to the pledgee]: “Take this pledge until the fixed day” [and the pledgee says to him] “If you do not redeem a pledge [till the determined term] do not ask it any more”; a judge will not approve that, and [the pledgee] has to wait until the third term; if [the pledgor] does not redeem [a pledge] till the third term, after that he cannot ask it [property pledged].

Аще кто заложитъ кою либо вещь. и речеть приеми залогъ. во то до коего дне, аще си не вткоупиши залогъ. да га векъ не ищетиши. да га соудѣа не чюеть за тои нь да га чека то третѣга рока. да аще мѣ до третѣга рока не вткоупиши. да га потѣм не ище.¹⁰⁰

Article 27, entitled simply “Law” (Закон), is similar to the rules of the *Syntagma*, treating the cases of pledge lost: “If any [pledgee] loses a pledge, he has to pay it, and to request a debt. If [the thing pledged] was destroyed by fire or seized by brigands, the indolence and negligence of the pledgee has to be examined. If he has saved his own property, and lost another’s, he is culpable” (Аще кто залогъ загоубитъ, да га плати, а дългъ да си оузмет. Аще ли га вогнь въ незапоу пожежетъ. или разбонници въхитетъ. подобаетъ изнати лѣность и неражденіе приемишомѣ. аще ли естъ своя съхранилъ, а чина погоубилъ повиненъ естъ).¹⁰¹

Serbian charters promulgated before the Law Code of Stefan Dušan mention pledge (залог) only two times. In King Milutin’s chrysobull to Hilandar’s pyrgos in Chroussia (1313–1316), the Serbian monarch says that nobody can take anything given to the monastery tower (πύργος), and he forbids that the property, belonging to Hilandar, could be sold or obtained as a pledge (ни оу коупно имѣ, ни оу залогоу никонимъ вбразомъ).¹⁰² The same formula was repeated in King Dušan’s chrysobull, giving the church of Most Holy Virgin in Lipljan¹⁰³ to

99 Ed. Ralles and Potles, p. 205; ed. Novaković, p. 215.

100 Edited by Marković, p. 59.

101 Ibid., p. 59. It is interesting to note that neither *Farmer’s Law* (the main source of so-called “Justinian’s Law”) nor *Procheiron* and *Basilika* contain such provisions. However, both articles are completely in the genius of Byzantine law.

102 Mošin, Ćirković, and Sindik, *Zbornik*, p. 443.

103 Lipljan (Serbian Cyrillic *Липљан*, Albanian *Lipjani*) is a town and municipality located in

Hilandar's pyrgos in Chroussia.¹⁰⁴ It is evident that a pledge, beside purchase, was considered as one of the ways of alienating property.

In Dušan's Law Code, only short article 90 treats the pledge: "Pledges, wherever they be, shall be redeemed" (Залогѣ коудѣ се вбрѣтаю да се вткоу-пѣю).¹⁰⁵ The legislator institutes the right of the pledgor to redeem the property pledged everywhere he finds it. The abovementioned provision was promulgated to the benefit of debtors (very often Serbs), who delivered precious goods to their creditors (with great frequency Ragusans) and often lost them for ever.¹⁰⁶ That was the reason why Tsar Dušan, in his famous treaty with Dubrovnik (20 September 1349, i.e. only four months after the promulgation of the Code) forbids to the Ragusans receiving pledges from Serbs:

From now and furthermore nobody can take or receive pledges, neither from my imperial or royal nobleman, nor from anyone else who has the power according to my imperial or royal authorisation. If someone took it, he has to return the pledge, and if he has given [property pledged] to the third person, a transaction will be without legal strenght.

И ѿд сели на прѣда да не прѣимѣ ни ѡзмѣ ник'то залогѣ ни ѿд властелина царѣства ми ни краљевѣ, ни кога любо дръжаниѣ царѣства ми и краљевѣ, к'то ли се вбрѣте ѡземѣ да залогѣ тѣзи поврати впѣть, а за цю ѣ приѣмѣ да мѡ се тѣзи кѡплиѣ ѡпад'нѣ.

However, at the end of the treaty, after the date and before the signature, was added that already existing pledges will be in legal force and that they will enjoy judicial protection (И вѣще такози ш ними ѡглави царѣство ми, цю сѡ залогѣ заложѣнѣ кога любо мала и голѣма изѣмѣ царѣства ми и краљевѣ да се ицѡ сѡдомѣ а прав'домѣ).¹⁰⁷ The same provisions were repeated in Tsar Uroš's treaty with Dubrovnik (25 April 1357).¹⁰⁸

the Priština district of Kosovo. According to the 2011 census, the town of Lipljan has 6,870 inhabitants, while the municipality has 57,605 inhabitants.

104 Edited by M. Ivanović, *SSA* 13 (2014), p. 43.

105 Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 70; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

106 It seems that it was very difficult for a pledgor to redeem his pledge from a pledgee. Maybe the best evidence is the letter of Tsar Dušan to the Ragusans from 30 March 1352: the Emperor himself intervenes with Ragusans that they get back to Prince (*knez*) Vratko the precious girdle, pledged for 118 perspers by Marin Bunić. See M. Pucić, *Spomenici srbski*, vol. II (Belgrade 1862), p. 20.

107 Edited by D. Ječmenica, *SSA* 11 (2012), p. 40.

108 Edited by M.A. Černova, *SSA* 12 (2013), p. 83.

Pledges were completely abolished in treaties between the cities of Dubrovnik (Ragusa) and Kotor (Cataro), already by 20 September 1181: *Ut pignora non sint inter Ragusium et Catarum*.¹⁰⁹

Special attention has to be paid to the charter of Despot Đurađ Branković, issued in the city of Smederevo on 10 May 1450 and written in Latin, in favour of *Johannes de Hwnyad, regni Hungarie gubernator* ("John Hunyadi¹¹⁰ Governor of the Kingdom of Hungary"). The Serbian Despot with his wife Jerina (Irene) and his sons Grgur, Stefan and Lazar agree that John Hunyadi and his sons Mathias and Ladislavus hold as a pledge (*in pignoratice*) the Despot's property in Hungary, towns of Mwnkach,¹¹¹ Rivulidominarum,¹¹² Zathmar,¹¹³ Nemethy,¹¹⁴ Debreczen,¹¹⁵ with the villages of Bezermen¹¹⁶ and Dada¹¹⁷ and the belonging manors (*possessio*), as security for a debt of 155,000 ducats. A debt will be discharged from the annual revenues of the Despot's property, estimated at 6,700 ducats. On payment of principal, the property had to be delivered up to the debtor.¹¹⁸ Although this document mentions a contract of pledge, it cannot be considered as a source of Serbian mediaeval law. All rules concerning the pledge were in accordance with the customary law of the Kingdom of Hungary (*regni consuetudinem pignori*).¹¹⁹

Emphyteusis (ἐμψυτεύσις, from verb ἐμψυτεύω = I implant, I inculcate, I instill) is a real right over the property of another, consisting in a grant of land by the State or local authority on a long lease or in perpetuity for a groundrent.¹²⁰ By the late 5th century *emphyteusis* had developed into a spe-

109 Novaković, *Zakonski spomenici*, p. 22.

110 Hungarian *Hunyadi János*, Romanian *Ioan* or *Iancu de Hunedoara*, Serbian *Sibinjanin Janko* (Сибѣянинъ Янко), famous Hungarian military commander and statesman.

111 Modern *Mukachevo* (Ukrainian and Russian *Мукачево*, Hungarian *Munkács*), a city located in the valley of the Latorica River in Zakarpattia Oblast (Province) in Western Ukraine. The population is 86,339.

112 Today *Baia Mare*, municipality along the Săsar River in northwestern Romania (Hungarian *Nagybánya*, German *Frauenbach*, Ukrainian *Бая-Маре*). The population is 140,738.

113 In present-day *Satu Mare*, a city with a population of 102,400 in northwest Romania (Hungarian *Szathmárnémeti*, German *Sathmar*).

114 Hungarian *Németi*, Serbian *Nemci* (Немци), i.e. *Germans*, small city close to *Satu Mare*.

115 Hungarian *Debrecen*, Romanian *Debrețin*, German *Debrezin*, Czech and Slovak *Debrecin*, Serbian *Дебрецин*, Hungary's second largest town. The population is 213,700.

116 Modern *Hajdúböszörmény*, a town in northeastern Hungary with a population of approximately 30,000 people.

117 Modern *Tiszadada*, a village in Szabolcs-Szatmár-Bereg county in the Northern Great Plain region of Eastern Hungary. The population is 2,247.

118 Edited by A. Krstić, *SSA* 11 (2012), pp. 151–174.

119 *Ibid.*, p. 155.

120 Cf. D. VI, 3.

cific type of written contract governing long-term, usually perpetual leases of real property applicable not only to crown lands but to holdings of private and ecclesiastical landlords. Emperor Zeno defined *emphyteusis* as a right distinct from lease or sale, although possessing certain qualities of both.¹²¹ An *emphyteuta* could not be evicted as long as he paid an annual fee (*solita pensio*) or presented to his master receipts (*apodochae*) for public services; his tenement was heritable and could not be alienated unless the tenant had lost the contract, *emphyteuticum instrumentans*.¹²²

Chapter 15 of the *Procheiron* has a title Περὶ ἐμφυτεύσεως,¹²³ and contains six provisions speaking on emphyteusis of Church estates. The Serbian translator of the *Procheiron* (*Zakon gradski*) used the word *nasazhdenije* (НАСАЖДЕНИЕ) = planting, implanting,¹²⁴ which is obsolete in modern Serbian.¹²⁵ Matheas Blastares introduced in his *Syntagma* a short Chapter E-8, entitled Περὶ ἐμφυτεύσεως (Θ ΝΑΣΑΖΔΗΝΙΗ in Serbian translation),¹²⁶ which represents an interpretation of Justinian's *Novella* CXX, chapters 2 and 8 (ΠΕΡΙ ΕΚΠΟΙΗΣΕΩΣ ΚΑΙ ΕΜΦΥΤΕΥΣΕΩΣ ΕΚΚΛΗΣΙΑΣΤΙΚΩΝ ΠΡΑΓΜΑΤΩΝ, *De alienatione et emphyteosi et locatione et hypothecis et aliis diversis contractibus in universis locis rerum sacrarum*).¹²⁷

In Serbian legal sources we cannot find any information on emphyteusis.¹²⁸

¹²¹ *Cod. Iust.* IV, 66, 1, a law promulgated between 476 and 484.

¹²² *Cod. Iust.* IV, 66, 2 and 3. Two laws promulgated in 529 and 530 by Emperor Justinian. See also D. Simon, "Das frühbyzantinische Emphyteuserecht", in *Akten der Gesellschaft für griechische und hellenistische Rechtsgeschichte*, vol. 3 (Vienna 1982), pp. 365–422, and A.J. Cappel, "Emphyteusis", in *ODB*, pp. 693–694.

¹²³ Zepos, vol. II, pp. 154–155.

¹²⁴ Ed. Dučić, p. 302; ed. Petrović, p. 287a. The title of the chapter in Serbian translation is Θ ΝΑΣΑΖΔΗΝΙΗ.

¹²⁵ In modern Serbian we use the word *zasadićanje* (засађивање).

¹²⁶ Ed. Ralles and Potles, pp. 250–251; ed. Novaković, pp. 263–264.

¹²⁷ Ed. Schoell and Kroll, pp. 578–591.

¹²⁸ See S. Šarkić, "Rights over the Property of Another (*Iura in re aliena*) in Byzantine and Serbian Mediaeval Law", *Science Journal of Volgograd State University* 25,6 (2020), pp. 168–179.

The Law of Obligations

1 The Concept of Obligation

According to the definition of Roman jurists “an obligation is a legal bond whose force compels us to perform something in accordance with a law of our State” (*Obligatio est iuris vinculum quo necessitate adstringimur alicuius solvendae rei, secundum nostrae civitatis iura*).¹ The essence of obligation is its personal nature. Obligations give rise to rights and duties.

The Serbian legal sources give us only a few bits of information on the law of obligations. The Roman classification used in the *Institutes* (*ex contractu, quasi ex contractu, ex delicto, quasi ex delicto*) was not known. The sources mention only two characteristic terms concerning obligations: *dug* (ДЛЪГЪ, ДЕЛЪГЪ, Greek χρέος, Latin *debitum*) = debt and *vera* (ВЪРА) = faith, trust, belief.²

Dug (debt) was a general term to designate an obligation in Serbian mediæval law. This can be seen from numerous legal acts. For example, Serbian King Stefan Uroš I, in his treaty with Dubrovnik (23 August 1254), says: “If the judges do not perform [the obligation], the debt will be taken by me the King, according to justice” (Ако ли га сѡдѣце не издаде да гдѣ ми правѣда ѡкаже ѡзѣти тѣ длѣгъ, да га ѡзѣме каралеѣвство ми).³ Two goldsmiths, Mihail and Brajko Bogojević, balancing their accounts and claims (29 December 1410), declare that there are no further mutual debts (И да не има векиѣ искати Бранко ни негѣвни сынови Миѣхата ни за еданъ длѣгъ, ни Миѣхат да не има векиѣ искати Бранка али негѣвне сынове али негѣвне ближне ни за еданъ длѣгъ, цю не било меѣю ними до дѣньсѣ).⁴ *Vera* (faith, trust, belief) concerns the essence of the obligation: only the promisor’s personal performance extinguished the obligation. In that sense King Uroš’s treaty with Dubrovnik (13 August 1252) requests that the parties to the agreement “stay in the good faith” (стоѣати ѡ правѣвѣрнои верѣ),⁵ and Tsar Uroš “gave [to the Ragusans] his imperial faith” (и на мою вѣроу царьскоу).⁶

1 *Iust. Inst.* III, 13, *De obligationibus*. We do not know who the author of the abovementioned definition is.

2 Taranovski, *Istorija*, vol. III, p. 101.

3 Mošin, Ćirković, and Sindik, *Zbornik*, p. 213. See also pp. 216, 257, 322, 326, 346, 358, 360, 538. Cf. B. Marković, “Dug”, in *LSSV*, pp. 171–172.

4 Edited by Bubalo, *Srpski nomici*, p. 255.

5 Mošin, Ćirković, and Sindik, *Zbornik*, p. 188.

6 Treaty from 29 September 1360. Edited by Novaković, *Zakonski spomenici*, p. 182.

This means that the creation of legal relations was understood as the “giving and acceptance of the faith”, as article 51 of Dušan’s Law Code says: *Shall I trust him? ... Trust him as myself* (ВѢРОВАТИ ЛИ ГА КЮ ... ВѢРЪИ КОЛИКО И МЕНЕ).⁷

2 Contracts

A contract is an agreement between two or more persons which creates an obligation to do or not do a particular thing. Studies of legal acts have shown that Serbian mediaeval law was acquainted with several contracts, such as sale, exchange, gift, deposit, hire, loan, gratuitous loan of a *res* (*commodatum*) and partnership.

2.1 Sale

Sale (*emptio-venditio*, πρᾶσις καὶ ἀγορασία, коупленіе и продажіе) was a contract in which the seller agreed to give exclusive possession of a thing to the buyer for a price. In general, all things (movable and immovable) and rights (including State functions and dignities, the purchase of titles) could be the basis for a sale contract. *Emptio-venditio* was minutely examined by Roman jurists, and Byzantine law also had a great number of rules concerning sale contract in the following miscellanies: 1) Chapter 1X of the *Ecloga* under the title “On literal and unilateral buy and sell agreements and their down payments” (Περὶ πράσεως καὶ ἀγορασίας, ἐγγράφου καὶ ἀγράφου, καὶ ἀρραβῶνων αὐτῶν), containing only two rules;⁸ 2) Chapter XIV of the *Procheiron* entitled “On buy and sell agreement” (Περὶ πράσεως καὶ ἀγορᾶς) with 11 articles;⁹ 3) Chapter XXIII of the *Epanagoge/Eisagoge* under the title “On buy and sell agreement” (Περὶ πράσεως καὶ ἀγορασίας), containing 21 provisions;¹⁰ 4) the whole Book XIX of the *Basilika*.¹¹ Taking the abovementioned Byzantine rules on sale contract, Matheas Blastares in his *Syntagma* created chapter A-4, under the title “On buying and selling” (Περὶ ἀγορᾶς καὶ πράσεως, Ὁ коупленіи и продажи), with 14 provisions taken from the *Ecloga*, *Procheiron* and *Basilika* (Νόμοι πολιτικοί, Законї градсци in Serbian translation).¹² The provisions express the rules of Graeco-Roman

7 Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 44; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

8 Ed. Burgmann, p. 204.

9 Ed. Zepos, vol. II, pp. 152–154.

10 Ibid., pp. 309–312.

11 *Basilika* XIX, ed. Scheltema, Van der Wal, and Holwerda.

12 Edition Ralles and Potles, pp. 76–78; edition Novaković, pp. 79–81.

(Byzantine) law on sale contract. However, only two sale contracts written in old Serbian survive: a) a certain Dobroslava, with her children, sells her house in the city of Prizren to a certain Mano, brother of Dragitza (1346–1371). The contract is also known under the title “*Tapiya* from Prizren”,¹³ b) a certain Radosava Mirković sells her house in Trepča to the monastery of Saint Paul (19 January 1438).

The first preserved sale contract consists of three parts: introduction or *protocol* (Early Modern English *prothocoll*, Old French *prothocole*, Mediaeval Latin *prothocollum*, from Greek πρῶτος = first and κόλλα = glue, the first leaf glued to a manuscript); text or *corpus*; and conclusion or *eschatocol* (Greek ἔσχατος = last and κόλλα = glue). At the beginning of the *protocol* the names of sellers were mentioned: Dobroslava, her two sons Prvoslav and monk Nikodim, and daughter Raya († Кръсть Доброславинъ, Каросове хѣтере, † крьсть сына ѿ Пръвослава, † крьсть дрѣго ѿ сына калѣгера Никодима, † крьсть хѣтере ѿ Раѣ).¹⁴ After that the names of neighbours (сѣмѣгникъ),¹⁵ who were Dobroslava’s relatives, were cited. The quotation of neighbours is very important: it means that they have renounced their pre-emption rights. Dobroslava says that she is daughter of Karos, but the name of her husband was not mentioned. Probably she was a widow at the moment when the contract was concluded. Beside every name stands a cross (†), what obviously means that all of them were illiterate. In the next line we read: “If there is something to be said [from abovementioned persons] Prvoslav will answer, and the buyer is free” (ако име цю говорити а Пръвославъ да ѿдговарать, а кѣпць да ѿ свободьнь).¹⁶ It means that Prvoslav (one of sellers) would be responsible for eviction—the act of depriving a person of the possession of property which he has held.¹⁷

The text or corpus starts with the following words: “I, Dobroslava daughter of Karos, with all abovementioned persons, with love and willingly put the Honorable and Life-Giving Cross to Mano, brother of Dragitza, and we sold him our

13 *Tapiya* (Serbian Cyrillic *manuja*) is a Turkish word (*tapu*), meaning land-registry certificate, title deed. Latest edition by Bubalo, *Srpski Nomici*, pp. 250–252.

14 Ed. Bubalo, p. 250.

15 The Serbian word is *sumednik* (rarely used in modern Serbian), coming from *međa* = boundary (line).

16 Ed. Bubalo, p. 250.

17 Taranovski, *Istorija*, vol. III, pp. 110–111. See also M. Živojinović, “Evikcija u Vizantiji i srednjovekovnoj Srbiji” [“Eviction in Byzantium and Mediaeval Serbia”], in *Papers of the Third Yugoslav Byzantine Studies Conference, Kruševac 10–13 May 2000* (Belgrade—Kruševac 2002), pp. 75–84. The author remarks that the provision concerning the eviction stands in an entirely unusual place: before the invocation, right after crosses with the names of sellers and neighbours (pp. 83–84).

home" (ІА Доброслава, Каросова хти, и с моими вишеѡписаними, съ лѡбовию и съ хтєниємъ, постависмо чѣстни и животвореци † крѣсть Манѡ, Драгичинѡ братѡ и продасмо мѡ дворъ нашъ).¹⁸ So, beside the names of the seller and buyer, the text emphasizes that the parties to the agreement entered freely, i.e. neither fear nor force was used. The object of the contract was legal and possible of achievement, and the creation of a legal relationship was expressed by the words "we put the Cross" and "we sold". The next lines designate the boundaries of the manor and fix the price—eight livres of silver (Цена би двора того осми литръ сребра).¹⁹ Transfer of ownership rights was expressed by the following words: "From this day on, let Mano acquire this house as hereditary real estate holder, and let him be capable of giving it as a present, as a dowry, of selling it, giving it for the soul, or swapping it" (Да ѡднѣска да си ѡблада Мано ѡнимъзи дворомъ ѡко и сѡци бациникъ, лѡби имати, харизати, прикисати, продади, за дѡшѡ дати, али замєнити).²⁰ The expression ѡднѣска ("from this day on") means that the ownership right on immovable property transfers by the consent of the contracting parties, without any external formality or symbolic act to fix the obligation.

At the end of the text we find a sanction in case of violation of contract. If someone from the sellers would disturb a buyer in his free enjoyment of his ownership rights, no court, imperial or ecclesiastical, would examine the seller's remarks (lit. "not to be listened by any court, imperial or ecclesiastical"). Besides, he has to pay so-called *nalogia* (налогина, from Greek ἀναλογία, lit. "proportion" or "resemblance"), a fine for violation of contract,²¹ to the Church (Кто ли се нагѣ ѡд насъ или ѡд нашега рода пос ... некое време Мана, а за ѡнъзи дворъ цю мѡ продасмо, да се не чѡѣ на всакомъ сѡдѣ цареве и црькѣвном и да платимо налогию црькви).²²

The final lines of the "*Tapiya* from Prizren" contain 13 names of witnesses, whose declaration under oath is received as evidence of validity of the contract. Two of them, Babitza and Kukitza (Бавица, Кѡкица), were neighbours, already mentioned in the *protocol*. The remaining 11 are new persons, all male. The document was composed by *nomik* (номикъ, иномикъ, намикъ, from Greek νομικός, name for public notary in Byzantium and Mediaeval Serbia) Nicholas,

18 Ed. Bubalo, p. 250.

19 Ibid.

20 Ibid.

21 *Nalogia* was mentioned in article 1 of so-called "*Justinian's Law*". Any party to the agreement who was responsible for the cancellation of a contract had to pay a fixed fine, called *analogia*, from Greek ἀναλογία, literally "proportion" or "resemblance" (и да плати гловоу, колико боудѣ ѡндѣ ѡписана аналогѣа). Edited by Marković, p. 53.

22 Ed. Bubalo, p. 250.

who was a cleric of the Prizren bishopric²³ and whose signature can be found at the end of the contract († Намикъ Никола ѿд Матере Божије призренъске написа и подписа).²⁴ On the back of the document a cross and signature of the buyer are situated († Мано, Драгичинъ братъ).²⁵

The “*Tapiya* from Prizren” was composed according to Byzantine models of sale contracts. However, it contains neither a date nor place, when and where it was written. This is unusual for Byzantine documents. Perhaps *nomik* Nicholas was neglectful and forgetful?

Our second sale contract is much shorter. The *protocol* contains only the usual invocation: “In the Name of the Father and the Son and the Holy Spirit” (Въ имѣ вѣща и сына и свѣтаго дѣха).²⁶ The following text reads as follows:

I Radosava, wife of Radonja Mirković, sold my house in the City of Trepča, to the honorable Saint Paul’s monastery and let it acquire [this house] as hereditary real estate holder without any disturbance. During my life I will keep a small room of the house, where me and my sister will find a shelter, and after our death everything will belong to God and to the monastery. And if I Radosava, or someone from my relatives, would have the impertinence to demand something [from the monastery], no court will trust us.

Аво ја Радосава, Радоніе Мираковикіа жена, продадохъ кѣію мою ѿ градѣ ѿ Трепча чѣстномѣ монастырѣ Светопавлѣскомѣ, да имѣ е ѿ бащинѣ вѣчнѣ никимѣ неувѣмліемо. А за мога живота ако бѣдѣ кѣдѣ бѣши, да имамъ ѿт кѣіе ед’нѣ кѣларѣ гдѣ кю прибѣгнѣт с сестромѣ, а по сѣмрѣти нашои в’се да е Божіе и монастыр’ско и ино цю бѣде. А ако ли бѣх се ја Радосава раскаавши или кто ѿдѣ моихъ дрѣзнѣвши цю поискати, да мѣ не вѣрованно ни на еднѣи правде).²⁷

At the end of the document we find the names of four witnesses: “chief priest” (*protopop*) Nicholas, Božićko Milenović, Ivan “urbarar”²⁸ and Prijezda Milmanović (А томѣи свѣдоци: протопопа Никѣла и Божик’ко Милѣнович, Иванъ ѿрбарарѣ и Приѣзда Мил’мановикѣ). The contract contains the exact date of pro-

23 On his personality see Bubalo, *Srpski nomici*, pp. 114–116.

24 Ed. Bubalo, p. 251.

25 Ibid.

26 Ibid., p. 260.

27 Ibid.

28 *Urbarar* (ѿрбарарѣ) was a civil servant who gave a concession for exploitation of mines.

mulgation (19 January 1438) and the signature of *nomik* Gunjan (А вѡсѡи се записа мѣсеца гѣнара .М. дѣнь, а вѣз лѣто .СЦ. сѣтно .МС. лѣтѡ. ІА НОМИКЪ ГОУНИАН писахъ и свидокѣю).²⁹ As distinguished from the “*Tapiya* from Prizren”, Radosava’s sale contract does not mention the price or the moment of transfer of ownership rights. Besides, Radosava instituted in the contract the servitude of lifelong use of a small room. *Nomik* Gunjan did not quote all owner’s rights, but used the general formula “let it hold [the house] as hereditary estate holder” (да имь є Ѹ бащинѸ вѣчноѸ). The sanction does not provide for payment of a fine. Finally, the fact that the contract was concluded by a married wife proves that women in mediaeval Serbia possessed full legal capacity.

Although we dispose with only two sale contracts, Serbian charters very frequently mention property acquired by a purchase agreement. The most common were cases when the monarch bought land from one monastery wanting to give it as a present to another monastery. For example, King Milutin bought a piece of land (1313–1316) close to the monastery of Hilandar for the security of the Church of Ascension on *pyrgos* in Chroussia (Сии же коматѣ и мер’тихъ оуставленѣ бысть изволеніемъ и вѣщинимъ з’говореніемъ по воли, а не по нужди, игоумена и баще и всега с’бора домоу Светыне Богородице Хилан’дар’скыне, рекыше, іако и коуплено бысть кралевствомъ ми ѡд нихъ).³⁰ The same King bought for the same *pyrgos* three more pieces of land from the same Hilandar monastery. The land was paid for by 1800 perpers (И з’говоривше се вси, продаше келии кралевства ми възнесению пиргоу иже на мори .Г. коматѣ ... И тези .Г. коматѣ кѣпи кралевство ми съ старцемъ Симеонномъ за тисоуцоу и ѡсмь съть перперъ).³¹ King Stefan Uroš III Dečanski bought Mountain Ouyezdna from Holy Mountain or Gradatz monastery for 100 sheeps with lambs (1330), and gave it as a present to the monastery of Dečani (И да кралев’ство ми пан’дократопоу планине коє соу надъ дѣчани в’се цю не ѡстало за хрисовоулемъ светогор’скимъ и градъ’скимъ. тоуигіере коупихъ Оуездноу за .р. ѡв’ць с’іагныци).³² Tsar Stefan Dušan bought places called Livade and Paliokometitza for 1760 golden coins, with the intention of giving it as a present to the monastery of Hilandar (продаше ми выше реченные мѣсто Ливадѣ и Паликометицоу ... за #аψѣ златиць).³³

29 Ed. Bubalo, p. 260. *Nomik* Gunjan lived in Trepča in the first half of the 15th century. See Bubalo, *Srpski nomici*, pp. 122–123.

30 Mošin, Ćirković, and Sindik, *Zbornik*, p. 441.

31 Ibid., p. 517.

32 *Dečanske hrisovulje*, ed. by Ivić and Grković, p. 127.

33 Novaković, *Zakonski spomenici*, p. 417, para. 11.

For the same reason monarchs bought real estate from natural persons (individuals). For example, King Milutin bought (1300) from a certain Kostadin, son of Lipsiot, and Andrian son of *kyr* Theodor, and from *kyra* Kalie, sister of Theodore and from her brother Theodore, several places in the city of Skoplje and its region, and gave it to Saint George's monastery (И кѡпи кралиѣство ми ѡт Костадина сына Липсѡтова, и ѡд Андриана, сына кѡрь Оеѡдоровѡ, и ѡд кѡра Калиѣ, сестре Оеѡдоровѣ и ѡд брата кѣ Оеѡдора, иже имѣахѡ мѣста оу Скопи градѣ и въ ѡбласти Скоп'скои).³⁴ In the charter presented to the monastery of Saint Archangels Michael and Gabriel, the house in Skadar, bought by Queen Helen, was mentioned (И коукиѡ оу Скѡдрѣ кою ѣ кѡпила кралица Елена).³⁵

Serbian charters mention cases when sale contracts were concluded between private persons, as well. For example, in King Stefan Dragutin's chrysobull presented to the monastery of Hilandar (1276–1281), the vineyard in Prizren in Biluša being bought by Budimirci Pravoslavići from an unknown villager was mentioned (И виноградь оу Призрѣнѣ оу Билоуши, кои соу били коупили оу мѡтохѡинскога члѡвѣка, Боудимирыци Правѡлавыкы).³⁶ King Dušan's charter issued in favour of the monastery of Treskavac (1335)³⁷ testifies that the object of trade was the church of Saint Nicholas in the village of Hlerine, sold by Vlach's bishop, with all men, vineyards, fields, and watermills, and with all regions and rights (Црѣква оу Хлеринѣ светини Никола, цю продаде влашѣки пис-коупѣ, съ людѣми, и съ виноградѣи, и съ нивинѣмъ и съ водѣничинѣмъ, и съ вѣсѣю ѡбластѣю и правинами).³⁸ In King Dušan's Chrysobull in favour of the elder Gregory (Grigorije), it was said that the monk Gregory bought back the place of Koriša, where he built the church (И си чѣст'ни и блажен'ни и прѣподѡбѣни стар'ць Григорѣе кралиѣв'ствоу ми говори како кѣтъ црѣквѣ съзидалѣ въ мѣстѣ рекомѣмъ Кориши, съ троудомъ и ѡткоупомъ).³⁹ In the list of estates of the monastery of Holy Virgin in Htetovo or Tetovo (1343),⁴⁰ we find an interesting case:

34 Mošin, Ćirković, and Sindik, *Zbornik*, p. 318.

35 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 100.

36 Mošin, Ćirković, and Sindik, *Zbornik*, p. 268.

37 The monastery of Treskavac (Macedonian *Treskavec*, Serbian Cyrillic *Трескавец*), dedicated to the Mother of God, is situated on the rocky Mount Zlatovrv, 8 km north of the city of Prilep, in North Macedonia. The monastery was built in the 12th century and rebuilt in the 14th by Serbian Kings Stefan Uroš Milutin and Stefan Dušan. In the mid-16th century it was renovated by *knez* Dimitrije Pepić of Kratovo. The monastery possesses a large collection of Byzantine frescoes. However, the monastery was destroyed by a fire in the early 2010s and, apart from the church, is now in ruins.

38 Novaković, *Zakonski spomenici*, p. 667, para. XXVII.

39 Edited by S. Mišić, *SSA* 12 (2013), p. 23.

40 Tetovo (Serbian Cyrillic *Тетово*, Albanian *Tetova*, Turkish *Kalkandelen*) is a city in the

“the monastery superior (*hegoumenos*) Isaiye bought Kraimir’s vast land with a house lot⁴¹ from Kyura, daughter of Kraimir, and from her sister Yera and her children Vitomir, Leo, Miliya and Roman for 20 *kabao*⁴² of grain, in the year of famine” (Нива оу Царева Стоуденца, Краимирова селице, цю коупи игоумень Исаиє оу Кюре, краимирове чтиєре, и оу сестре кен Кєре, и оу нихъ дѣтен, оу Витомира и оу Леа и оу Милиа и оу Романа, за .В. кѣвьль жита оу гладно врѣмє).⁴³ In a note added later to Tsar Dušan’s chrysobull presented to the monastery of Arhiljevitza (10 August 1345),⁴⁴ we can read that a certain Novak Borislavović sold a fourth part of his watermill to *hegoumenos* Đuroman (А во продаде Новакь Бориславовикь игѣмнѣ Гюроманѣ четвѣрти дѣль водѣнице подѣ баллавицѣмь).⁴⁵

In Serbian legal documents the property acquired by a purchase agreement was called *kupljenica* (коуплєница), *kupenica* (коупеница) or *kupeničije* (коупеничиє). All of these three terms are derivated from the verb *kupiti* = to buy, but they are obsolete in modern Serbian. For example, in King Milutin’s charter in favour of the monastery of Hilandar, regarding the *kellion* (cell) of Saint Paraskeve in Tmorane (c.1300), *kupljenica* [purchased estate] of sebastokrator Pribo, endower of the *kellion*, was mentioned (коуплєница хитора сиези кєлиє протосѣваста Приба).⁴⁶ Giving presents to Saint George’s mon-

northwestern part of the Republic of North Macedonia, built in the foothills of Šara Mountain and divided by the Pena River, with a population of 52,915 (the great majority are Albanians).

41 The Serbian word is *selište* (сєлиштє). On the meaning of the word, scholar’s opinions are divided. According to F. Miclosich, *Lexicon palaioslovenico-graeco-latinum* (Vienna 1863–1865), p. 836, *selište* means *tentorium*, *habitatio*, *aula* and *χωρος*. Daničić, *Rječnik iz književnih starina*, identified *selište* with *selo* (village), and his opinion was accepted by Mažuranić, *Prinosi*, p. 1298. Novaković, *Selo*, pp. 106–113, thought that *selište* was a place for conveniently settling. For more details see R. Mihaljčić, “Selišta”, *ZFFB* 9.1 (1967), pp. 172–224 = *Complete Works, Book IV* (Belgrade 2001), pp. 89–158.

42 One *kabao* = 16 kg.

43 Slaveva, Miljković-Pepok, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 298.

44 Arhiljevitza (Serbian Cyrillic *Архиљевица*) is the name of a lost mediaeval village and monastery. Based on Emperor Dušan’s charter, Arhiljevitza was situated where the granted villages Podlešane, Izvor and Ručinci lay, on the slopes of Jezer (Kumanovska Crna Gora), between the modern cities of Preševo (South Serbia) and Kumanovo (North Macedonia).

45 V. Aleksić, “Dva prepisa potvrdne hrisovulje Stefana Dušana povodom osnivanja manastira Vavedenje Presvete Bogorodice, zadužbine sebastokratora Dejana u selu Arhiljevici kod Preševa”, p. 37. Cf. A. Solovjev, “Ugovor o kupovini i prodaji u srednjovekovnoj Srbiji” [“Sale Contract in Mediaeval Serbia”], *APDN* 15 (32)/6 (1927), pp. 429–448.

46 Mošin, Čirković, and Sindik, *Zbornik*, p. 333.

astery near Skoplje (1300), King Milutin says that all hereditary estates and *kupljenice* (purchased estates) within the designated boundaries would belong to the monastery (Уто се оберѣтаѣтъ въноутрь мегѣ вишеписанне, или чина годѣ боудѣ бацина или коуплѣеница).⁴⁷ In the list of estates of Holy Virgin monastery in Htetovo (1343), the expression *kupljenica* (purchased estate) was mentioned in several places in the document: “close to Stanko’s *kupljenica*” (до коупленице Стан’ковѣ); “till the *kupljenica* of Dragoman and Velimir” (до коупленице Драгомановѣ и до Велимировѣ); “piece of vineyard in Vasilevce, that Radota gave to the church for his soul and from his *kupljenica*” (Комать лозина оу Василевцехъ цю даде Радота цркви за доушоу коупленицоу си); “close to the priest’s Vlado *kupljenica*” (ѿ и до попа Владове коупленице).⁴⁸ Tsar Dušan, with the consent of his nobleman *Župan* Radoslav (съ хотѣниемъ любимаго властелина царьствоу ми Радослава жоупана), gave as a present to Saint Archangel’s monastery (1348) the village of Klčevište with all nobleman’s *kupljenica* (и с коуплѣеницами).⁴⁹ Article 174 of Dušan’s Law Code mentions “Workers on the land who have their own inherited property, land, vineyards or purchased estate” (Людѣ земляне кои имаю свою бацинѣ, землю и виноградѣ, и коуплѣенице).⁵⁰

The expression of *kupenica*, meaning purchased estate as well, was mentioned in King Stefan Dečanski’s charter in favour of the Episcopacy of Prizren (April 1326): all that the King gave to the monastery was “with hereditary estates and *kupenice*” (з’бацинами и с коупеницами).⁵¹ The same word can be found in Tsar Dušan’s charter to the lesser lord Ivanko Probištitović (1350): The Tsar says that Ivanko can use his estate as every *kupenica* (како всакоу коупеницоу),⁵² i.e. as any property acquired by purchase agreement.

The term *kupeničije*, in the meaning of purchased estate, can be found in the charter of King Dušan for the church of Virgin Mary Perivlepta in the city

47 Ibid., p. 321.

48 Slaveva, Miljković-Peppek, and Mošin, *Spomenici na srednovekovnata i ponovata istorija na Makedonija*, vol. III, pp. 185, 287, 293, 295.

49 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 98.

50 Burr, “The Code of Stephan Dušan”, p. 533; Novaković, *Zakonik*, p. 136; *Zakonik cara Stefana Dušana*, vol. III, p. 150. Cf. B. Marković, “Ugovor o kupoprodaji prema zakonodavstvu cara Stefana Dušana” [“Contract of Sale According to Tsar Stephan Dušan’s Legislation”], in *Srednjovekovno pravo u Srba u ogledalu istorijskih izvora, Zbornik radova sa naučnog skupa održanog 19–21. marta 2009, Srpska Akademija Nauka i Umetnosti, Odjeljenje društvenih nauka, Izvori srpskog prava XVI* [Medieval Law in Serbian Lands in the Mirror of Historical Sources, Proceedings of the Scientific Conference Held from March 19 to 21, 2009, Serbian Academy of Sciences and Arts, Department of Social Sciences, Sources of Serbian Law XVI] (Belgrade 2009), pp. 57–75.

51 Edited by S. Mišić, *SSA* 8 (2009), p. 17.

52 Edited by V. Aleksić, *SSA* 8 (2009), p. 73.

of Ohrid (1343–1345). The King says that he gave several villages to the church, with their *kupeničije* and all rights (Ѹ Радовлицехъ цръква светлаа Богородица с коупеничиємъ и съ вѣѣми правинами).⁵³ King Stefan Dušan gave his nobleman Rudl, with all his property, to the monastery of Hilandar (28 March 1343). Among the other goods that Rudl has acquired, *kupeničije* (purchased estate) was mentioned as well (и съ коупеничиємъ).⁵⁴ In Tsar Uroš chrysobull to Kyril, Metropolitan of Melnik (May 1356), we read: “And purchased estate (*kupeničije*), that Metropolitan Kyril bought himself” (И кѹпеничине цю си кѣтъ кѹпиль самъ митрополить Кѹрьиль).⁵⁵ Examples are numerous, and we cannot quote them all.

In the Greek charters of Serbian monarchs, the property acquired by a purchase agreement was designated by the terms ἐξ ἀγορᾶς, ἐξ ἀγορασίας, and once the verb ἀγοράζω = I buy, was used in the past tense (ἡγόρασεν τὴν στάσιν = he bought the estate). We shall quote several examples. 1) King Dušan's chrysobull in favour of Saint John the Forerunner monastery on Mount Menikion (October 1345) mentions “the land near Livadia acquired by purchase agreement from Melachrini” (γῆ εἰς τὸ Λιβιάδιον ἐξ ἀγορᾶς ἀπὸ τῆς Μελαχρινῆς). 2) In Tsar Dušan's chrysobull presented to the monastery Vatopedi on Holy Mountain, we read: “and also everything that gave as a present my imperial courtier military judge Mavrophoros, from his dowry and from hereditary estate and from purchased estate” (καὶ ὅσα ἀφιέρωσεν ὁ οἰκεῖος τῇ βασιλείᾳ μου κριτῆς τοῦ φοσσάτου ὁ Μαυροφόρος ἀπὸ τε προικὸς αὐτοῦ καὶ γονικότητος καὶ ἐξ ἀγορασίας). 3) In the first chrysobull issued by Tsar Simon Uroš to the monastery of Saint George in Zavlantia in Thessaly (August 1359) it is written: “estate that bought Koteanitza and gave it to the monastery community” (τὴν στάσιν, ἕτερον ὅπερ ἡγόρασεν ὁ Κοτεανίτζης καὶ δέδωκεν εἰς τὴν μονήν).⁵⁶

Acquisition of ownership by purchase agreement in the Greek charters of Serbian rulers differs from the other derivative acquisitions. Ownership acquired by hereditary estate was designated by the expression ἀπὸ γονικότητος (γονή = offspring, descendant, seed); acquired by gift ἀπὸ προσενέξεως (from the verb προσφέρω = I offer, I present); acquired by dowry ἀπὸ προικὸς (προῖκα, προῖξ = dowry). Among derivative acquisitions of ownership in Greek charters we can find two more terms: κτάομαι = I obtain, I receive, I gain, and χαρίζω = I present, I give from love, I donate.⁵⁷

53 Edited by V. Aleksić, *SSA* 14 (2015), pp. 25–26.

54 Edited by S. Mišić, *SSA* 9 (2010), p. 78.

55 Edited by R. Mihaljčić, *SSA* 2 (2003), p. 88.

56 Solovjev and Mošin, *Diplomata graeca*, pp. 12, 142, 220.

57 See S. Šarkić, “Sticanje svojine ΕΞ ΑΓΟΡΑΣ u grčkim poveljama srpskih vladara” [“Acquisi-

As soon as the price was fixed the contract would have been complete. The price had to be definitive, genuine, and in coined money. However, in some cases the payment was in kind. For example, Kraimir's land with house lot was sold, in the year of famine, for 20 *kabao* of grain, one bellow of cheese and half a slab of bacon (за .В. КЪБЪЛЬ ЖИТА ОУ ГЛАДНО ВРЪМЪ, и проиузесмо мѣхъ сирениа и полоутъкъ сланине).⁵⁸ Parties to the purchase agreement could fix the price freely (да си продаю и кѣпѣю свободно),⁵⁹ but in some cases the price was already designated by law or by order of the State authority. In the oath of Ragusan Doge Andrea Dauro and the Community of Dubrovnik to Serbian King Uroš I (August 1254), it was ordered that grain and wine in Dubrovnik had to be sold to Serbian citizens for the same price as to Ragusans (Жито и вино кое се науче продавати љ градѣ, да се не подражи твоиѣхъ ради люди, нѣ да се продае іако нашими людьми тако и твоими).⁶⁰ King Dragutin's treaty with Dubrovnik (1277–1281) says that Ragusans must sell wine without water and honey according to the price fixed in the market-town of Brskovo (Дало є краљевство ми милость дѣбровѣчамъ да си продаю вино безъ воде и медь љ цѣнь љ брьсковѣ љ тръгѣ краљевства ми).⁶¹

The payment of the agreed price was the performance (*solutio*) of the sale contract. However, if the whole amount of the agreed price was not paid, the seller could terminate the obligation. Such a case was provided in article 8 of so-called "*Justinian's Law*": "If someone sells a field or vineyard or something else, and receives half of the price and after that he changes his mind, and does not want to sell, he has to return the money and take his own; if more than a half of the agreed price was given, then the contract is considered as valid" (Аще кто продаст нивоу или винограду, или ино что и оузме въ цѣне пол, и пакы се оуспомене да не прода, да врати цѣноу, а свое да си оузме впеть аще ли се нагнє, ере єст данно и мало выше въ полъ цѣне, да стоитъ коупаѣа како єст и продана).⁶²

Earnest money (down payment, *arra*, *arrha*, ἀρραβών, арабонъ, арабонъ) is a sum of money paid by a buyer at the time of entering a contract to indicate the intention and ability of the buyer to carry out the contract. At the begin-

tion of Ownership ЕЕ ΑΓΟΡΑΣ in Greek Charters of Serbian Rulers"], in *ΠΕΡΙΒΟΛΟΣ tome I, Mélanges offerts à Mirjana Živojinović* (Belgrade 2015), pp. 299–308.

58 Slaveva, Miljković-Peppek, and Mošin, *Spomenici na srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 298.

59 King Stefan the First Crowned's treaty with Dubrovnik, 1214–1217. Edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 87.

60 Mošin, Ćirković, and Sindik, *Zbornik*, p. 216.

61 Ibid., p. 272.

62 Edited by Marković, p. 55.

ning of Chapter A-4, dedicated to the sale contract, the *Syntagma* of Matheas Blastares has a short provision on earnest money: if the buyer was responsible for the breach of contract, he would lose his down payment. If responsibility was on the seller, he had to give a double down payment (ἀρράβωνος δὲ δοθέντος, καὶ διαλυομένης τῆς πράσεως, εἰ μὲν ὁ ἀγοραστὴς εἴη ὁ διαλύων, ἀπόλλυσι τὸν ἀρράβωνα· εἰ δὲ ὁ πρᾶτης, διπλοῦν ὃν ἔλαβεν ἀρράβωνα παρασχεῖν ἀναγκάζεται, ἀραβονοῦ же дан'ноу ব্যব'шоу, и раздрѣшаюштихъ се коупли, аште оубо коупись іестъ раздрѣшаиен, погоубаієтъ арабонъ; аште ли продавьць, соугубъ иже приєль іестъ арабонъ подати поноуждаієтъ се).⁶³ The rule was taken from Justinian's *Institutes*.⁶⁴ Serbian legal sources have no provisions on earnest money.

Ius protimeseos (προτίμησις, literally “preference”) is the right of pre-emption of a landlord in a case where the tenant wishes to dispose of his rights as a perpetual lessee. Among the Serbian legal documents only two articles of so-called “Justinian's Law” mention pre-emption right:

Article 10 “If someone wants to sell something in the village, let it sell not to a stranger, but to the peasant from the same village, because such a purchase would be not valid and a buyer would have no benefit, only to receive back [money] that he gave” (Аще кто хощетъ продати оу селѣ какового любо вещь, да ю не продастъ надворниемоу чловѣкоу, нь тогази села селаниноу, понеже не крѣпка іестъ кѣплиа тѣи, ѡнзи коупись не иматъ ползоу развѣ приєти цю даль).

Article 11 “If someone sells a shed, or land, or vineyard, or mill, he has to inform on that his relatives and his neighbours, whether they want to buy; if they do not want to buy, let it sell to a stranger, who wants to buy; if he does not inform his relatives and neighbours, those relatives and neighbours in ten years' time can dispute the purchase and give back the money and take the estate; after ten years nothing to be wanted” (Аще кто продаваієтъ хлѣвиноу, или нивѣ, или виноградѣ, или млинѣ, прѣжде да ѡбличитъ ближникомъ, и ѡбщникомъ да ѡни коупетъ. аще ли ѡни не ѡсхотетъ кѣпити а ѡнъ да продастъ надворниємѣ кто хокіє коупити. аще ли не ѡбличитъ ближникомъ, и ѡбщникомъ нь продастъ ѡтѣи надворниємѣ чловѣкѣ да

63 Edition Ralles and Potles, pp. 76–77; edition Novaković, pp. 79–80. Serbian translators took the Greek word *arabon* or *aravon* from Latin *arrha*. From the 14th century in the Adriatic maritime towns we find a new term: the Italian word *capara* (from *capere arrhas* or *cape arrham*), which prevails in modern Serbian and Croatian. See Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 418–419.

64 *Iust. Inst.* III, 23. Cf. *Procheiron* XIV, 1, Zepos, vol. II, p. 152.

СЪ ВОЛНИ УБЫЩНИЦИ И БЛИЖНИЦИ СЪПРОТИВИТИ СЕ И ЦЪНОУ ВРАТИТИ, А ДОСТОЯНИЕ ОУЗЕТИ, А ПО ДЕСЕТОМЪ ЛЪТЪ НЕ ИСКАТИ НИЦА).⁶⁵

Although these two articles were not directly taken from any Byzantine legal compilation, the influence of Byzantine law is evident.⁶⁶

Beside articles 10 and 11 of so-called “*Justinian’s Law*”, pre-emption right was indirectly mentioned in the “*Tapiya* from Prizren”: the quotation of neighbours in the text of a document means that they have renounced their pre-emption rights (see above). Saint George’s charter (1300) says that neither land nor vineyard within the monastery manor can be sold outside of the monastery manor’s boundaries (НИ ДА СЕ ПРОДА НИВА НИ ВИНОГРАД ИЗЪВЪНЬ).⁶⁷ That unequivocally meant that pre-emption rights were applied on Saint Georges’s monastery estate.

As we can see, the pre-emption right was instituted in favour of relatives and neighbours, but only for villagers. There is no information on whether the pre-emption rights were applied to the nobleman class. It seems that it was not possible because a nobleman had no neighbours from the same village: the village was a unit of a nobleman’s manor.⁶⁸

2.2 Exchange or Barter

Exchange or barter (*permutatio*, ἀντάλλαγμα, РАЗМЕНА, ЗАМЕНА) is the exchange of goods and productive services for other goods and productive services, without the use of money. The agreement to exchange is one of the oldest legal transactions. It is very similar to the contract of sale, so that Roman lawyers belonging to the so-called Sabinian school considered *permutatio* as a kind of *emptio-venditio* (sale). On the other side, followers of the so-called Proculian school proved that *permutatio* and *emptio-venditio* were two separate contracts, pointing out the difference between them.⁶⁹ Provisions on barter

65 Edited by Marković, pp. 55–56.

66 Although not explicitly employing the term *protimisis*, *Novel 114* of Leo VI implies that the right of neighbours to have first refusal on property sales was well-established in Byzantium. Cf. G. Ostrogorski, “The Peasant’s Pre-emption Right”, *Journal of Roman Studies* 37: *Papers Presented to N.H. Baynes* (1947), pp. 117–126. See also B. Marković, “Pravo preče kupovine prema zakonodavstvu cara Stefana Dušana” [“Pre-emption Right According to the Legislation of Tsar Stefan Dušan”], *ИČ* 58 (2009), pp. 63–77.

67 Mošin, Ćirković, and Sindik, *Zbornik*, p. 324.

68 See S. Šarkić, “Sale Contract in Serbian Medieval Law (Concerning the Influence of Byzantine Law)”, in ΑΡΕΤΗΝ ΤΗΝ ΚΑΛΙΣΤΗΝ, *Mélanges en l’honneur de Kalliope (Kelly) A. Bourdara* (Athens–Thessaloniki 2021), pp. 839–851.

69 Gaius, *Institutiones* III, 141:

Item pretium in numerata pecunia consistere debet. Nam in ceteris rebus an pretium esse possit, veluti homo aut toga aut fundus alterius rei pretium esse possit, valde quaer-

were presented by the redactors of Justinian's *Digests* in the short chapter four of book 19.⁷⁰

Byzantine laws and legal miscellanies contain only a few provisions that treat this old legal transaction. *The Farmer's Law* (Νόμος γεωργικὸς κατ' ἐκλογὴν ἐκ τοῦ Ἰουστινιανοῦ βιβλίου) in articles 3, 4 and 5 speaks of exchange of farmers' land. However, the exchange was performed on the basis of customary law rules and not according to the contracts known from Graeco-Roman law. Besides, *The Farmer's Law* does not use the expression ἀντάλλαγμα, usual in Byzantine legislation, but the substantive καταλλαγή (conciliation, change) and verb καταλλάσσω (I change, I level, I conciliate).⁷¹ The *Ecloga* does not mention explicitly the agreement to exchange, but it contains a provision that forbids "to the Most Holy Church of the Imperial Town" (Ἡ τῆς βασιλίδος πόλεως ἁγιωτάτη ἐκκλησία) giving real estates on a long lease (emphyteusis), except barren lands; lands can be exchanged only with the Imperial Home (βασilikῶ

itur. Nostri praeceptores putant etiam in alia re posse consistere pretium. Unde illud est, quod vulgo putant per permutationem rerum emptionem et venditionem contrahi, eamque speciem emptionis venditionisque vetustissimam esse; argumentoque utuntur Graeco poeta Homero qui aliqua parte sic ait:

ἔνθεν οἶνιζοντο κάρη κομόωντες Ἀχαιοί,
ἄλλοι μὲν χαλκῶ, ἄλλοι δ' αἰθωνι σιδήρῳ,
ἄλλοι δὲ ῥινοῖς, ἄλλοι δ' αὐτῇσι βόεσσιν,
ἄλλοι δ' ἀνδραπόδεσσι ...

Diversae scholae auctores dissentiunt aliudque esse existimant permutationem rerum, aliud emptionem et venditionem; alioquin non posse rem expediri permutatis rebus, quae videatur res venisse et quae pretii nomine data esse, sed rursus utramque rem videri et venisse et utramque pretii nomine datam esse absurdum videri.

Moreover, the price must consist of money, for it is seriously questioned whether it can consist of any other property, as for instance, a slave, a robe, or a tract of land. Our preceptors think that a price can consist of other property, and hence is derived the common opinion that purchase and sale are contracted by exchange of articles, and that this kind of purchase and sale is of the highest antiquity and in proof of their contention they adduce the statement of the Greek poet Homer, who somewhere says:

Here landed Achaean ships in search of wine,
They purchased it with copper and with iron,
With hides, with horned cattle, and with slaves.

Authorities belonging to the other school dissent from this, and think that the exchange of articles is one thing, and purchase and sale another, as where property is exchanged it cannot be determined what is sold and what is given by way of price; and, on the other hand, it is absurd to consider that both articles are sold, and at the same time given by way of price.

70 D. XIX, 4, 1–2, *De rerum permutatione*. The chapter contains only two fragments of the Roman jurist Paulus.

71 Edited by W. Ashburner, "The Farmer's Law", *The Journal of Hellenic Studies* 30 (1910), p. 97; edited by Zepos, vol. II, p. 65.

δὲ οἷκῳ ἀνταλλάττειν καὶ μόνον).⁷² The *Procheiron* does not have a single word on barter, while the *Basilika* of Leo the Wise, in the chapter entitled Περὶ πραγμάτων ἀντικαταλλαγῆς, took the corresponding rules from Justinian's *Digests* and four laws from Justinian's *Codex*.⁷³ The *Ponema Nomikon* (Πόνημα νομικόν), a synopsis of Roman law that is basically a summary of the *Basilika*, done by the famous historian Michael Attaleiates,⁷⁴ does not treat the agreement to exchange, but it contains a chapter dedicated to synallagmatic (bilateral or reciprocal) contracts (Περὶ συναλλάγματος πράσεως καὶ ἀγορασίας καὶ περὶ συμφώνων τοῦ τε πράτου καὶ τοῦ ἀγοραστοῦ συντεθέντων).⁷⁵ The extended version of the *Procheiron* (Αὐξημένον Πρόχειρο, *Procheiron auctum*), created around 1300,⁷⁶ contains a very short chapter on barter, under the title Περὶ ἀνταλλαγῆς καὶ τὶ διαφέρει ἀνταλλαγῇ πράσεως.⁷⁷ The text was taken from the *Basilika* (xx, 3,3), i.e. Justinian's *Codex* (iv, 64,1, the law from the year 238, promulgated in the name of the Emperor Gordian I). The *Syntagma* of Matheas Blastares mentions barter, not in a separate chapter but when it speaks of one of the rights to alienate a thing: "According to the laws alienation of a thing is a transfer of ownership, such as gift, sale, long lease, exchange and similar" (Παρά δὲ τοῖς νόμοις, ἐκποίησις μὲν λέγεται κυρίως ἢ μετάρθεις τῆς δεσποτείας, ἡγουν ἢ δωρεά, ἢ πῶσις, ἢ ἐμφύτευσις, ἢ ἀνταλλαγή καὶ τὰ ὅμοια, ОΥѢ ЗАКОНѢ ЖЕ ОУЛОЖЕНІЕ ОУБО ГЛАГОЛЕТЬ СЕ ИСТЪБЕ ПРѢЛОЖЕНІЕ ВЛАДЫЧЬСТВА, СИРѢЧЬ ДАРОВАНІЕ, ПРОДАНІЕ, НАСАЖДЕНІЕ, ЗАМѢНИЕНІЕ И ПОДОВНАІА).⁷⁸ However, the Serbian translators of Matheas Blastares' *Syntagma* use the expression ЗАМѢНИЕНІЕ (change, exchange) in the meaning of a contract (συναλλάγμα) as well. For example, Chapter Γ-12 has the title "How one should not enter into a marriage contract with heretics" (Ὅτι οὐ δεῖ γάμους συναλλάττειν μετὰ αἱρετικῶν, ГЛАГО НЕ ПОДОВАІЕТЬ БРАКА ЗАМѢНОВАТИ СЪ ЕРЕΤИЗІ).⁷⁹

Although not a single agreement to exchange has been preserved, Serbian mediaeval law mentions its existence. For example, article 18 of so-called "*Justi-*

72 *Ecloga* XII, 4, ed. Burgmann, p. 210.

73 *Basilika* xx, 3,1; xx, 3,2; xx, 3,3; xx, 3,5; xx, 3,6, ed. Scheltema, Van der Wal, and Holwerda, pp. 1006–1007 = D. XIX, 4,1–2; C. I. IV, 64,1; IV, 64,2; IV, 64,3; IV, 64,4.

74 On that synopsis see S.N. Troyanos, *ΟΙ ΠΗΓΕΣ ΤΟΥ ΒΥΖΑΝΤΙΝΟΥ ΔΙΚΑΙΟΥ* (Sources of Byzantine Law) (Athens—Komotini 1999, new edition 2011), pp. 208–210.

75 Zepos, vol. VII, p. 427.

76 See Troyanos, *ΟΙ ΠΗΓΕΣ ΤΟΥ ΒΥΖΑΝΤΙΝΟΥ ΔΙΚΑΙΟΥ*, pp. 285–286.

77 Zepos, vol. VII, p. 340.

78 Edition Ralles and Potles, p. 271; edition Novaković, p. 285.

79 Edition Ralles and Potles, p. 173; edition Novaković, p. 181. See also chapters Γ-15 (Ralles and Potles, p. 181; Novaković, pp. 189–190) and Δ-10 (Ralles and Potles, p. 229; Novaković, p. 241).

nian's Law" says: "If two farmers made agreement to exchange their fields, in presence of two or three trustworthy witnesses, the exchange will be unbroken" (Аще два земледѣлатели между собою зговорита се замѣнити нивы, аще боудутъ между ими два или три вѣрнии свѣдѣтели, да прѣбивають мѣна непоколебимо).⁸⁰ The *Farmers's Law* also speaks of exchange of lands between two peasants (замѣнити нивы) in articles 3 and 4.⁸¹ Naturally, the Serbian text follows the Greek original. In the already mentioned "*Tapiya* from Prizren" it is said that Mano (the buyer) has a right to exchange purchased property (among other ways of alienation of a thing).⁸² Almost the same formula can be found in Tsar Simeon's chrysobull, written in Greek, presented to his nobleman John Tzaphas Oursinos Doukas (January 1361). Simeon (Siniša) confirms to John Tzaphas and his heirs the ownership rights on all their estates, saying that they can freely do with the property what they wish, i.e. sell it, give it as a present or as a dowry, exchange it, or leave it by will to God's churches (ἔχειν τε ἐπ' ἀδείας ποιεῖν ἐπ' αὐτά, εἴ τι ἄρα καὶ βούλοιτο, ἡγοῦν πωλεῖν, χαρίζειν, προικίζειν, ἀνταλλάττειν, θείοις ναοῖς ἀφιερῶν).⁸³ The exchange (ἀνταλλαγή) of estates was mentioned in several places in Despot John Uglješa's charter settling a dispute between the monastery of Zographou and the Bishop of Ierissos.⁸⁴

However, in Serbian mediaeval law, barter is most frequently mentioned in cases when a monarch, giving land to the Church, exchanges his domains and domains of his subjects in order to encircle a hereditary estate of a certain monastery.⁸⁵ Such a legal transaction has a lot of elements of public law, and it follows the Byzantine models.⁸⁶ For example, King Milutin in the charter in favour of Saint Stephen's monastery in Banjska (1313–1316) says that everything that he gave as a present to the monastery, together with his brother Stefan Dragutin, was his own property, either purchased or obtained by begging or exchanged from the Archbishop or someone else (или ѿт авога подахъ или коупихъ или испросихъ, или замѣнихъ, или оу господина архиепископа или оу кога любо). A few lines further on the King emphasizes that everything that was aquired by purchase or exchange was done so willingly (коупаиениаи и замѣне

80 Edited by Marković, p. 57.

81 Edition Radojičić, p. 20; edition Blagojević, p. 50.

82 Edition Bubalo, p. 250.

83 Solovjev and Mošin, *Diplomata graeca*, pp. 236–237.

84 Ibid., pp. 272–275.

85 Taranovski, *Istorija*, vol. III, p. 113.

86 G. Ostrogorski, "Razmena poseda i seljaka u hrisovulji cara Aleksija i Komnina Svetogorskoj Lavri iz 1104. godine" ["Exchange of Estates and Peasants in Emperor Alexios I Comnenos' Chrysobull to Holy Mountain's Lavra from the Year 1104"], *IC* 5 (1955), pp. 19–25 = *Complete Works, Book 2* (Belgrade 1969), pp. 187–195.

вол'не),⁸⁷ meaning with the consent of the other party to the agreement. In the chrysobull presented to the monastery of Gračanitza (1321), King Milutin reports how he took away the village of Banjska from the Holy Virgin Gračanica monastery and gave it as a present to Saint Stephen's Church, but he gave to Gračanitza another church with estates in exchange (а за то дахъ въ замѣноу цръковь тоу близѣ цръкве Светые Богородице съ всѣми мѣстами и правими). The King also says that he took away a few Vlachs belonging to the Episcopacy of Lipljan,⁸⁸ and gave them as a present to Saint Stephen's monastery; in exchange he gave some other Vlachs (И за Влахе Драгобратіе кою дахъ Светому Стефанѣ, дахъ за не замену епискоупии липіаньскои Команине Влахе).⁸⁹ On the demand of Bishop Arsenios, King Stefan Dečanski gave as a present to the Episcopacy of Prizren (April 1326) the land held by the King's villagers, but he did not take the church's land in exchange (И проси ме епископъ призрѣнскы Арсение да мою съединю землю влахомъ на Блатци цю дръже люди кралѣвства ми ... а землю цръковноу цю соу дръжали власи на Блатци не оузе кралѣвство ми себѣ оу замѣноу).⁹⁰

The exchange had to be done willingly and compensation just. It was not permitted to a monarch to damage the hereditary estate holder, as can be clearly seen from Tsar Dušan's chrysobull to Saint Archangel's monastery (1348). The Tsar says that he made the exchange of the estates—villages for villages, vineyards for vineyards, mills for mills—with the family Vladojević, willingly, without any strain and justly (нихъ воломъ и нихъ хотѣніемъ, а не нѣкою ноуждено,⁹¹ замѣнихъ и дахъ замѣноу ... села за села, винограде за винограде, млине за млине).⁹² The same chrysobull confirms that Tsar Dušan took away the city of

87 Edition Trifunović, p. 9.

88 Lipljan (Serbian Cyrillic *Липљан*, Albanian *Lipjani*) is a town and municipality located in the Priština district of Kosovo. According to the 2011 census, the town of Lipljan has 6,870 inhabitants, while the municipality has 57,605 inhabitants. The Roman city of Ulpiana was located near Lipljan and was named in honour of the Roman Emperor Marcus Ulpius Nerva Traianus. Lipljan was the seat of the mediaeval Episcopacy of Lipljan, which existed up to the beginning of the 18th century.

89 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 501, 502.

90 S. Mišić, "Hrisovulja Kralja Stefana Uroša III Prizrenskoj Episkopiji" ["King Stefan Uroš's Third Chrysobull to the Episcopacy of Prizren"], *SSA* 8 (2009), p. 18.

91 Serbian documents follow their Byzantine models. For example, in the agreement of exchange between *proedros* (προέδρος) Nikephoros and the monastery of Docheiariou it was accentuated that the barter was done willingly "without any coercion, use of force, depravity, sham and lie, fear ... or any other reason forbidden by laws" (οὐκ ἔκ τινος ἀνάγκης ἢ βίας ἢ δόλου ἢ συναρπαγῆς καὶ ἀπάτης ἢ φόβου ... ἢ τῶν ἄλλων ἀπάντων τῶν τοῖς νόμοις ἀπηγορευμένων αἰτιῶν). Oikonomidēs, *Actes de Docheiariou*, p. 83.

92 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 89.

Višegrad with villages from the Episcopacy of Prizren, and gave it as a present to Saint Archangel's monastery, but he gave in exchange other villages to the Episcopacy of Prizren. The Tsar emphasizes that the barter was done with the agreement and consent of all clergy (зговоромъ всего збора и расоужденіемъ ... дахъ замѣноу епископии Призрѣнскои и егоровѣмъ хотѣніемъ и всего клироса).⁹³ The principles of voluntariness and consent were accentuated in article 43 of Dušan's Law Code, as well: "Neither the Lord Tsar, nor the King, nor the Lady Tsaritsa is free to take estates by force, nor to buy nor exchange, unless the owner freely consents" (Да нѣсть волѣнь господинь царь, ни краль, ни госпожда царица никомѣ оузети бацине по силѣ ни коупити ни замѣнити, развѣ ако си кто самъ полюбыи).⁹⁴ In the charter of monk Dorotheos to the monastery of Drenča (2 March 1382), confirmed by Prince Lazar, it is written that neither Prince nor bishop can capture the church's estate, or exchange it by use of force, or abuse the monastery's property in any other way (Ѡиѣти коли, ли замѣнити нѣжданимъ замѣненіемъ, или инѣмъ кѣмъ извѣтомъ Ѡтрыгнѣти).⁹⁵ In practical life, did we have abuses of principles of voluntariness and consent? In the absence of legal documents it is very hard to say.⁹⁶

2.3 Gift

Gift (*donatio*, δῶρον, даръ) is the act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person without paying for it. Byzantine law took the provisions on gift from the legislation of Emperor Justinian, and it regulated them in detail. The *Procheiron* and its Serbian translation (*Zakon gradski*) contain the following chapters on gift: Chapter VI, "On gifts before the marriage" (Περὶ προγαμιάας δωρεάς, О прѣждебравненѣ дарѣ); Chapter X, "On gifts between husband and wife" (Περὶ δωρεῶν μεταξὺ ἀνδρὸς καὶ γυναικὸς, Ѡ дарѣхъ между мужемъ и женою); Chapter XII, "On gifts" (Περὶ δωρεῶν, Ѡ дарѣхъ); Chapter XIII, "On revocation of gifts" (Περὶ ἀνατροπῆς δωρεῶν, Ѡ оврацненіи даровъ).⁹⁷ Some provisions on gifts could be found in Chapters XXXI and XXXII of the *Procheiron*, i.e. the *Zakonopravilo* of Saint Sabba.

93 Ibid., p. 88.

94 Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 39; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

95 Edited by Mladenović, p. 181.

96 See S. Šarkić, "Ugovor o razmeni (*permutatio*) u rimskom, vizantijskom i srpskom srednjovekovnom pravu" ["The Agreement to Exchange (*Permutatio*) in Roman, Byzantine and Serbian Mediaeval Law"], *ZRVI* 52 (2015), pp. 331–342.

97 Zepos, vol. II, pp. 129–133; 144–145; 150–151; edition Dučić, pp. 266–272; 286–288, 296–298; edition Petrović, pp. 273a–276a; 281a–281b; 284b–285a.

The *Syntagma* of Matheas Blastares contains a separate Chapter dedicated to the gift (Δ, Δ-13), entitled “On gifts” (Περὶ δωρεῶν, Ο ΔΑΡΩΤΕΥΧΗΣ).⁹⁸ Math-eas Blastares put only five articles in this chapter, which were taken from *Procheiron*.

The first article issues the rule that every gift is perfect and that it can be revoked only in a case of ingratitude of the donee (Πᾶσα δωρεὰ τελεία γενο-μένη οὐκ ἀνατρέπεται, εἰ μὴ ἐξ ἀχαριστίας, Β'ΣΑΚΟ ΔΑΡΩΒΑΝΤΙΕ СЪВРЪШЕН'НО БЫВ'ШЕ НЕ ВЪЗЪΡΑЖАЕТЪ СЕ ΡΑΖВ'Ъ ΟΤЪ НЕΒΛΑΓΟΔΑΡΕΝΙΑ).⁹⁹

The second article prescribes which persons were to be considered as ungrateful (*ingratus*, ἀχάριστος, НЕΒΛΑΓΟΔΑΡ'НЬ). “Ungrateful” signifies the one who “raises an unjust hand” (*manus impias inferat*, ἡ χεῖρας ἀδίκους ἐπαγάγη, ΡΟΥΙΤ' НЕПРАВΕΔНО ПРОСТР'ЕТЬ) on the donor, who insults him, or who plans any activity against the donor's life. Ungrateful is, as well, the one who causes by wrongful acts great damage to the donor's property or who does not respect the agree-ments which were added, literally or verbally, to the contract of the gift. Such actionable negligence must be proven in court.¹⁰⁰

The third rule prescribes that the gift given by a person under puberty or by an insane person could be revoked, because they were considered to “have no conscience”—meaning that they are not considered to be accountable (Οὔτε ἄνηβος, οὔτε ἄνους δύνανται δωρεῖσθαι, ἐν οὐδενὶ γὰρ τούτων ἐστὶ βούλησις, НИ ЖЕ НАДОРΑСТ'ИИ НИ ЖЕ БЕЗОУМНЫ МОЖЕТЪ ДΑΡΩΒΑΤИ, НИ ВЪ ЕДИНОМЪ ВО СΙΧ'Ъ ΚΕΣΤ' СЪВ'ЕТЬ).¹⁰¹

The fourth article allows the person under puberty who gave a gift to revoke it when he reaches the age of 25 (when he assumes full legal capacity). In order to do so the court procedure (ἀγωγήν ποιείσθαι, ΠΡΟΥ СЪΤВОΡΙΤИ) is to be brought within four years.¹⁰²

98 Edition Ralles and Potles, pp. 237–238; edition Novaković, p. 250.

99 Edition Ralles and Potles, p. 237; edition Novaković, p. 250.

100 Edition Ralles and Potles, p. 238; edition Novaković, p. 250. This provision was taken, word for word, from *Procheiron* XIII, 3, and it is related to a law from the reign of Emperor Justinian (530), *Codex Iustinianus* VIII, 55, 10: *Generaliter sancimus omnes donationes lege confectas firmas illibatasque manere, si non donationis acceptor ingratus circa donatorem inveniatur, ita ut iniurias atroces in eum effundat vel manus impias inferat vel iacturae molem ex insidiis suis ingerat, quae non levem sensum substantiae donatoris imponit vel vitae periculum aliquid ei intulerit vel quasdam conventiones sive in scriptis donationi impositas sive sine scriptis habitas, quas donationis acceptor sponndit, minime implere voluerit.*

101 Edition Ralles and Potles, p. 238; edition Novaković, p. 250.

102 Edition Ralles and Potles, p. 238; edition Novaković, p. 250. This provision was taken from the *Procheiron* as well, but it could not be found in the chapters treating the institution of gift, but rather in Chapter XXXI, 8, under the title “On compensation” (Περὶ ἀποκαταστά-

The fifth article concerns the so-called *donatio immodica* or *inofficiosa* (δωρεάν ἄμετρον, даръ безмѣрънъ), a gift of so great a part of the donor's property that the birthright portion of his heirs is diminished.¹⁰³

Thus, all the basic principles of Graeco-Roman (Byzantine) law referring to the gift are present in Byzantine legal miscellanies translated in mediaeval Serbia. Yet which of these were actually applied? The fact is that not a single contract of gift survives from that time. Mention of gifts can be found in charters which testify on donations of movable and immovable things to churches, monasteries, noblemen and, rarely, villagers. The sovereign mostly gave land in hereditary estate (*baština*), meaning that a donee (the hereditary estate holder) had a full and unlimited ownership right over his manor. However, the property acquired in that way differs from the classical Roman contract of gift as a civil law act.¹⁰⁴ Donations of manors to churches, monasteries and noblemen, given by a ruler, have the characteristics of public law authorisations, and it is related to the complex structure of feudal society.

The Serbian legal sources designate the act of donation by different terms, such as *zapisati* (to note, to record), *priložiti* (to contribute), *podložiti* (to place under), *pronositi* (to bring closer), *darovati* (to donate) and *dati* (to give). Nouns, derived from these verbs, are *zapisanije*, *priloženije*, *prinošenije* and *dar* (gift).¹⁰⁵ The sources mention the expression *harisati* as well, coming from the Greek verb χαρίζεσθαι = to donate from love or from favour.¹⁰⁶

Donations that were given to the Church were irrevocable, as can be seen in the *Typikon* of the monastery of Hilandar (1198), where we read: "What was

σεος, Ο υγετρονενι). Zepos, vol. II, pp. 186–187; edition Dučić, pp. 351–353; edition Petrović, pp. 305a–305b.

103 Edition Ralles and Potles, p. 238; edition Novaković, p. 250. Matheas Blastares took this provision from the *Procheiron* as well, but he much abridged the fourth paragraph of chapter XXXII, which is in relation to Justinian's *Novella* XCII, 1, under the title ΠΕΡΙ ΤΩΝ ΕΙΣ ΠΑΙΔΑΣ ΑΜΕΤΡΩΝ ΔΩΡΕΩΝ, *De immensis donationibus in filios*. However, chapter XXXII of the *Procheiron* (Zepos, vol. II, pp. 188–189) does not treat the institution of the gift, but rather the division of inheritance, although it has an unusual title Περί φαλκιδίου. On the meaning of the term *falkidios*, i.e. *lex Falcidia*, see the next chapter dedicated to the law of wills and succession.

104 Roman law considered the gift (*donatio*) as a pact (*pactum*), not as a contract. The term *pacta* was for those agreements that the law does not directly enforce, but which it recognizes only as a valid ground of defence. *Donatio* belonged to so-called *pacta legitima*—pacts which had been made actionable as the result of imperial legislation.

105 Taranovski, *Istorija*, vol. III, p. 101.

106 Solovjev, *Zakonodavstvo Stefana Dušana*, p. 424. The author refers to a provision from *Procheiron* XII, 1 (Zepos, vol. II, p. 150), which is: Τῶν δωρεῶν αἱ μὲν εἰσιν ἐν ζωῇ γινόμεναι, καὶ πρὸς ζωὴν τὴν χάριν καὶ τὴν εὐεργεσίαν γνωρίζουσαι καὶ τὴν εὐγνωμοσύνην ἐπιζητοῦσαι.

once given to God, could never be taken; who takes [from the Church] is a thief and he will be punished" (ИБО ЕДНОУЦИ БОГОУ ДАРОВАН'НОЕ НЕ ВЪЗЫМАЕТ' СЕ. ВЪЗЫМАЕН ЖЕ, СВЕЩЕН'НОКРАДЕН КЕСТЬ. ТВОРЕИ ЖЕ СВЕЩЕН'НОКРАСТИ, ИМАТЬ ЗАПРѢЦЕНІЕ).¹⁰⁷ The same idea was more clearly expressed by Stefan Nemanja, the founder of the Serbian dynasty, in the charter presented to the monastery of Hilandar. The final part of the text reads as follows: "And everything that I gave to the monastery in Holy Mountain, not to be requested neither by my sons, nor by my grandsons, nor by my relatives or anyone else" (И ВСА ЕЛИКО ДАХЪ МАНАСТЫРЕВИ ОУ СВЕТОУ ГОРОУ, ДА НѢ ТРѢБѢ НИ МОЕМОУ ДѢТЕТЕВИ, НИ МОЕМОУ ОУНОУЧЕТЕВИ, НИ МОЕМОУ РОДИМОУ НИ ИНОМОУ, НИКОМОУРЕ).¹⁰⁸ The identical formula was repeated in later charters of Serbian monarchs as well. It should be noticed that the wording "not to be requested by my sons" was especially emphasized. Through this wording the ruler intended to stress that even his heirs could not revoke a gift.

The legal title of manors given as hereditary estates to noblemen was different. As we have already seen, the Emperor could deprive the hereditary estate holder of his manor only in a case of high treason. In all other cases, Dušan's Law Code guaranteed to the hereditary estate holders security of property using the terms "those patrimonies are confirmed" (БАЦИНЕ ДА СОУ ТВРДѢ).¹⁰⁹ The lord who was the hereditary estate holder could freely consume his property: sell it, give it as a present, or alienate it in any other way, which is unequivocally said in article 40 of Dušan's Code: "and they may be disposed of freely, submitted to the Church, given for the soul or sold to another" (ДА СЪ ВОЛ'НЫНЫМИ И ПОД ЦРЬКОВЬ ДАТИ, ИЛИ ЗА ДОУШѢ ВДАТИ, ИЛИ ИНОМѢ ПРОДАТИ КОМѢ ЛЮБѢ).¹¹⁰ It is interesting that the term *harisati* ("to donate from love or from favour to a natural person"), as an alienation right, was not mentioned in Dušan's Law Code. However, in Emperor Dušan's charter to the lesser lord Ivanko Probištitović it is written that Ivanko can dispose with his estate as with any other purchase (*kupljenica*) and he can "submit [his estate] to the Church, or donate from love to anyone" (ЛЮБИ КОМѢ ХАРИЗАТИ КЪДЕ МѢ КЕСТЬ ХОТѢНІЕ), according to his wish.¹¹¹ The term *harisati* can also be found in Emperor Uroš's charter from 10 April 1357 to the noblemen from Kotor Bivoličić and Bučić.

107 Edition Jovanović, pp. 110–112; edition Ćorović, p. 132.

108 Mošin, Ćirković, and Sindik, *Zbornik*, p. 69; edition Ćorović, pp. 2–3.

109 Articles 39, 40 and 43. Burr, "The Code of Stephan Dušan", pp. 205–206; Novaković, *Zakonik*, pp. 36, 39; *Zakonik cara Stefana Dušana*, vol. III, pp. 108, 110.

110 Burr, "The Code of Stephan Dušan", p. 206; Novaković, *Zakonik*, p. 36; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

111 Edited by V. Aleksić, *SSA* 8 (2009), p. 73.

Emperor Uroš donated the island of Mljet to the abovementioned noblemen, allowing them to alienate it by all the ways of alienation, including donation from affection to someone (χαρίζατι).¹¹² A Greek chrysobull of Emperor Dušan's half-brother Simeon-Siniša, lord of Thessaly and Epiros, confirming on January 1361 the estate of his great lord John Tzaphas Oursinos Doukas, says that Tzaphas can do with the donated lands anything that he wants, including the right to donate from affection to any individual (χαρίζειν).¹¹³

The text of those three charters confirms clearly that noblemen could alienate their property by giving it as a present, because the expression *harisati* (to donate from love, from favour, from affection) is always mentioned as a way of alienation. Therefore, it is hard to explain why article 40 of Dušan's Law Code does not mention the gift as the way of alienation of the hereditary estate. Some scholars consider that it could be an omission of the copyists, because Dušan's Law Code was not preserved in the original text. However it is indisputable that the property acquired by a purchase agreement could be alienated by gift (donation). Maybe the best example we can find is a contract in which Dobroslava together with her children sold her manor in Prizren to Mano (see above). So, having bought the house, Mano acquired full ownership, including the most important property right—the right to alienate a thing (so-called *abusus*). Among the different ways of alienation of a thing (transfer of the property) the author of the document mentions *harisati*—to give a present from affection.

We dispose with a document which mentions a gift between two persons belonging to the villager's class. A monk Savatiye adopts as son the parish priest Bogdan (September 1434), donating to him half of his hereditary estate (church and house). Bogdan and his heirs will acquire all ownership rights on the estate, like all other purchased property, according to the law of Novo Brdo (city statute). However, the new owner will be responsible for potential debts that the church had. The second half of the estate Bogdan will acquire after Savatiye's death, under the condition that he reposes and commemorates him:

Аво како њ монахъ Саватїе примихъ к себе попа Богдана оу синовнѣ имѣ и дадохъ мѣ и записахъ половинѣ цркъве мое бацин'не и половинѣ кѣче мое бацин'е ѣ подградїю, и такои дадохъ ѡ Саватїе и благословихъ половинѣ вишеречен'не цркъве и кѣче да ю внѣ има и негвво дете и ѡнѣче и родъ по родѣ ѣ бацинѣ до века по законѣ града Нового Брѣда, никимъ неутем-

112 Edited by R. Mihaljčić, *SSA* 3 (2004), p. 74.

113 Solovjev and Mošin, *Diplomata graeca*, p. 236.

лѣмо. Или є коѣа гробнина или є кои дохѡдыкъ, все Богѹ и Niemѹ, тѣчю да ми є помень, и да ме ѹпокои колико га Богѹ наѹчи како то сынѹ родителѣ. И цю беше црьква доужна платати и коупи црьквеѹ како всакѹ кѹпленицѹ ... и записахѹ попѹ Богданѹ прѣдѹ сведоци, до мое сьмрьти половинѹ, а по моеи сьмрьти Божіе и Niemѹво все.¹¹⁴

The term *harisati* expressed *donatio inter vivos* (a gift between the living), i.e. the ordinary kind of gift by one person to another. However, in Serbian legal sources we can find several examples of *donationes mortis causa* (gifts in contemplation of death), but this legal act belongs to the law of will and succession, and we shall treat these in the next chapter.¹¹⁵

2.4 Deposit

Deposit (*depositum*, παραθήκη, παρακαταθήκη, καταθήκη, покладъ, поставъ, похрана) was in Roman law a contract in which a depositor gave a *res* to a deposittee to be kept without remuneration and to be returned on demand.¹¹⁶ Special cases of *depositum* were:

- a) *Depositum sequestre*. Where the ownership of a *res* was the subject of litigation, the *res* could be deposited with a third party until the action was settled. The depositor remained the owner of a *res*.¹¹⁷
- b) *Depositum necessarium* or *depositum miserabile*. In the case of fear, ruin, fire, shipwreck (*in metu ruinae incendii naufragii*) or civil disturbance, goods might be deposited. Double damage could be claimed if the property deposited was not returned on demand.¹¹⁸
- c) *Depositum irregulare*. In this case the *res* had to be returned *in genere* (in kind), e.g. money deposited in a bank. Classical lawyers considered for a long time such a contract as *mutuum* (a loan). However, Papinianus pointed out that this is a kind of *depositum* and his opinion was accepted by the lawyers of Justinian.¹¹⁹

The depositor's duties were to pay any expenses involved in the custody of the *res* and to make good any damage caused by the *res*. The duties of the deposittee

¹¹⁴ Edited by Bubalo, *Srpski nomici*, p. 258. The document was written by *nomik* Stepan (Stephen).

¹¹⁵ See S. Šarkiċ, "The Gift in Serbian Mediaeval Law", in *Institutions of Legal History with Special Regard to the Legal Culture and History*, ed. G. Béli, D. Duchoňová, A. Fundárková, I. Kajtár, Zs. Peres (Bratislava–Pécs 2011), pp. 25–31.

¹¹⁶ D. XVI, 3, 1; *Pauli Sententiae* II, 12.

¹¹⁷ D. XVI, 3, 17.

¹¹⁸ D. XVI, 3, 1.

¹¹⁹ Cf. D. XVI, 3, 24–25.

were: a) to keep the *res* safe and not to use it; b) to return the *res* and its produce on demand without charge; c) to give the depositor any of his rights of action against a person who had caused the loss of the *res*.

The duties of the depositary were enforced by an *actio depositi directa*, in which condemnation brought *infamia* (a loss of one's civic reputation and standing). The duties of the depositor were enforced by an *actio depositi contraria*.¹²⁰

Byzantine law pays special attention to the contract of *depositum*. The *Ecloga* contains Chapter XI referring to the deposit, entitled Περὶ πάσης παραθήκης. The text is:

Ἐάν τις δι' οἰανδήποτε πρόφασιν ἢ φόβον παραθήκην παράθηταί τινι καὶ συμβῇ τὸν ταῦτα παραλαμβάνοντα ἀρνήσασθαι, ζητουμένου τοῦ κεφαλαίου καὶ ἀποδεικνυμένου αὐτοῦ ψεύστου, κατὰ δίπλαν ἀποδιδότω αὐτὰ τῷ παραθεμένῳ. εἰ δὲ καὶ δεῖσῃ συμφορὰν τινὰ εἴτε ἀπὸ πυρκαϊᾶς ἢ καὶ ἀπὸ κλοπῆς ἐπελθεῖν αὐτῷ καὶ σὺν τῶν ἰδίων αὐτοῦ ἀπολέσθαι κάκεῖνα, τηρεῖτωσαν οἱ ἀκροαταὶ καὶ ἀνέγκλητον τὸν τοιαύτην παραθήκην ἐσχηκότα φυλαττέτωσαν ὡς ἀκουσίως αὐτὰ ἀπολέσαντα.¹²¹

As can be seen, the redactors of the *Ecloga* abbreviated all fragments of Roman jurists referring to the *depositum* into only two provisions: 1) if someone for any reason or from fear deposited a *res* in custody, double damage could be claimed if the deposited property was not returned on demand (if a depositary lied that he got a thing);¹²² 2) if the deposited goods perished, either from fire, theft, or any other accident, together with the property of a depositary, the judges had to examine the case and consider whether the depositary was not responsible because he lost the goods involuntarily.

Chapter XVIII of the *Procheiron* entitled Περὶ καταθήκης contains 14 rules concerning the *depositum*, and the Chapter XXV from the *Epanagoge/Eisagoge*, with the same title, contains 16 fragments on the same topic.¹²³ However, Mathaeas Blastares in his *Syntagma* incorporated only two fragments referring to the *depositum*, taken from the *Procheiron*, in the short Chapter under the title Περὶ

¹²⁰ See L.B. Curzon, *Roman Law* (London 1966), pp. 141–142. *Codex Iustinianus*, book IV, chapter XXXIV, entitled *Depositum*, contains 12 laws (from 234 till 532) referring to the *depositum*. The fragments of Roman lawyers concerning the *depositum* were presented by the redactors of the *Digests* in chapter III of book XVI, entitled *Depositum vel contra* (34 fragments). See also *Pauli Sententiae*, book II, chapter XII, entitled *De deposito*.

¹²¹ Ed. Burgmann, p. 208.

¹²² It could be *depositum miserabile* or *depositum necessarium* of Roman law.

¹²³ Zepos, vol. II, pp. 162–164 and 315–317.

παρακαταθήκης:¹²⁴ 1) the general definition of *depositum*,¹²⁵ and 2) the law on responsibility of a depositee for a loss of a thing in case of *vis maior* (a greater or superior force), *culpa* (fault, neglect) and *neglegentia* (negligence).¹²⁶

The contract of *depositum* was mentioned in mediaeval Serbia mostly in the translations of Byzantine legal miscellanies, while Serbian legal sources mention it very rarely.

In Chapter 48 of the *Nomokanon* (*Zakonopravilo*) of Saint Sabba, entitled “The Selection of Laws that God Gave to Moses”, we find a short title “On depositum” (Ω ποκλαдѣ).¹²⁷ Much more important is Chapter 55 in which Saint Sabba has adopted the complete text of the *Procheiron*. Title XVIII “On depositum” (Ω ποκλαδεжи) contains 14 fragments translated from the *Procheiron*.¹²⁸ The Serbian redactors of the complete *Syntagma* of Matheas Blastares took and translated into Old Serbian two fragments on *depositum* from the original Greek text: Ω ποκλαдѣ. Закони. 1) Ποκλαдѣ кєтъ кєжє нє сѣхрєниєнїє нѣкємєу даємєу; 2) Ацє отъ нашѣстєѣ разбєинникъ ижє ποκλαдѣ приємєи погєуєитѣ, нє бѣдєстєуєтѣ наслѣдникємъ тогє погєбѣлѣ; ижє во ποκλαдѣ приємєиє, дѣсти кѣ тоμєу и нєвѣрѣжєнїа и лѣнєстїи истєзєиєтѣ сє развѣ ацє рєчєниє и инє нѣѣтє сѣглєси сє, рєкшє ουγλαва бѣтѣ.¹²⁹ However, they added one more provision which increased the responsibility of the deposetee. The text in Old Serbian is: Прїємєи ποκλαдѣ, ацє нє прилєжитѣ, ιαко ο σѣοємѣ, повиньнѣ кєтѣ (“If a depositee does not keep the *res* as being his own, he is doing a fraud”).¹³⁰

124 Π-6, ed. Ralles and Potles, p. 404.

125 *Procheiron* XVIII, 1, Zepos, vol. II, p. 162: Παρακαταθήκη ἐστὶ τὸ παραφυλαχῆν τινι διδόμενον.

126 *Procheiron* XVIII, 10, Zepos, vol. II, p. 163: Ἐὰν ἐξ ἐπιδρομῆς ληστῶν ὁ τὴν παρακαταθήκην λαβὼν ἀπώλεσε τὰ παρατεθέντα αὐτῷ, οὐ κινδυνεύεται τοῖς κληρονόμοις αὐτοῦ ἡ ἀπώλεια. ὁ γὰρ παραθήκην λαμβάνων δόλον μόνον καὶ ῥαθυμίαν καὶ ἀμέλειαν ἀπαιτεῖται, εἰ μὴ ῥητῶς καὶ ἑτερόν τι συνεφωνήθῃ. Cf. *Codex Iustinianus* IV, 34, 1, a law from the reign of Emperor Alexander, from the year 234.

127 Ed. Petrović, p. 251a.

128 Ed. Dučić, pp. 315–318; ed. Petrović, pp. 291b–292b. Serbian mediaeval sources use for *depositum* the term *poklad* (поклад, ποκλαдѣ), now an obsolete word. In modern Serbian the expression *ostava* (οcтaвa) is in use, derived from the verb *ostaviti* = to leave, to set aside. The Latin term *deposit* (*denozum*) is in use as well, especially in juridical terminology.

129 Chapter Π-6, edition Novaković, pp. 425–426.

130 Edition Novaković, p. 426, note 1. The text is an exact translation of *Procheiron* XVIII, 10 (ed. Zepos, vol. II, p. 163): Ὁ μὴ τῆς παρακαταθήκης ὡς τῶν ἰδίων ἐπιμελούμενος δόλον ποιεῖ. Cf. D. xvi, 3, 32, *Celsus libro undecimo digestorum: nam et si quis non ad eum modum quem hominum natura desiderat diligens est, nisi tamen ad suum modum curam in deposito praestat, fraude non caret*. According to Solovjev, *Zakonodavstvo Stefana Dušana*, p. 428, the fact that the Serbian redactors of the *Syntagma* added one provision which does not exist in the Greek text is an important proof of the seriousness of Serbian lawyers. They con-

The Serbian legal sources mention the contract of deposit especially in relationships between the citizens of Serbia and the small City-Republic of Ragusa (Dubrovnik), which was the most important commercial partner of the mediaeval Serbian State. The remaining documents were written either in Latin or in Old Serbian. We shall quote several examples.

In the contract concluded between the city of Dubrovnik (Ragusa) and the city of Kotor (Cataro), written in Latin (5 June 1279), we can read the following words: *Item volumus, quod tam Ragusini quam Catarini possint facere credentias et reposturas sive deposita*. In the same document, a few lines further down we find the terms: *Item firmamus, quod omnia deposita sive debita*.¹³¹ It seems that the word *depositum* in the quoted text was used as a synonym for a debt (*debitum*). However, in the next chapter, we find the expression *depositum* in its original meaning (*Et de debitis et depositis, factis tempore pacis*).¹³²

More important is a document from 3 July 1281, where the Serbian King's representatives from Kotor received the deposit of Župan Desa, son of King Vladislav, in Dubrovnik:

Quod pro nobis et nomine et vice communis et hominum Catari recepi-
mus a prenominato domino comite et comuni Ragusii res infrascriptas
depositas olim in Ragusio per condam iuppanum Desam filium condam
domini regis Ladisclavi et dominam Bellosclavam matrem ipsius iuppani
Desae ... Et etiam promittimus et obligamus nos et comune et homines
Catari conservare comune et homines Ragusiii perpetuo indemnes ab
omnibus dampnis et expensis, que possint eis quocunque modo occur-
rere occasione dicti depositi ... Iste autem sunt res de dicto deposito.¹³³

These words were followed by a long list of deposited objects.

In the documents, written in Old Serbian, beside the word *poklad* (покладъ), used in the translation of Byzantine legal miscellanies, we can find for *depositum* the nouns *postava* (поставѧ) and *pohrana* (похранѧ) as well as the verb *postaviti* (поставити).¹³⁴

sidered *depositum* as a very important contract; as the *Syntagma* of Matheas Blastares contained only two laws on *depositum*, they remembered that the *Procheiron* has 14 titles and they took one.

131 Solovjev, *Odabrani spomenici*, pp. 55, para. 6; 56, para. 7.

132 Ibid., p. 56, para. 8.

133 Ibid., pp. 60, 61.

134 Although the word *postava* is very similar to the term *ostava* (*depositum*), in modern Serbian it means something totally different—*lining*. The verb *postaviti* means today *to place*,

Poklad was mentioned in Tsar Dušan's letter written from the city of Serres (Σέρραι) to the Ragusans on 23 February 1355. The Tsar asked the Ragusan Doge to deliver to his envoys the objects which were deposited with the Ragusan nobleman Maroje Gučetić (тамо послахъ калѣгѣре царства ми и ш ними Николицѣ Пацровици по работи царства ми да љзмѣ цю сѣ покладѣ поставили ѣ Мароја Гочетика).¹³⁵

Postava was mentioned for the first time in the letter that the Ragusans wrote to Princess Militza (Милица), a widow of Prince Lazar (6 December 1395), regarding the *depositum* (*postava*) of Župan Nicholas (И цю пишете за поставоу жоупана Николе). The same words (and the verb *postaviti*, as well) were used one more time in the letter that Mehmedbeg, the ruler of the Serbian lands, wrote to the Ragusans around 1463. Mehmedbeg said that a certain Radivoj Vrljak came to him, claiming that he left in *depositum*, together with his mother Militza, 400 ducats with the Ragusan goldsmith Stepan (И да ви је оу знаније, аво доходи Радивој синь Николе Врљинакѣ тер ми говори, како је поставиљ с својом матерью с Милицом 4 ста доукат оу поставоу оу Степана златара).¹³⁶

Serbian Despot Đurađ Branković left his treasure in *depositum*, to be kept by the Ragusans (25 January 1441), for the reason that the city of Dubrovnik was much safer than any other place in Serbia. Today, we dispose of a very long list of deposited objects made by Ragusan notaries. At the beginning of the document, the Ragusan Doge and all noblemen confirm that they have received from Despot Đurađ in *depositum* the following treasures (Ми кнезь, властеле и вса опкина властео владоуѣаго града Доубровника прѣмисмо одѣ славнога господина деспота Гюрга господара Српскои земли ... оу похраноу ниже речено именовано благо).¹³⁷ After a long list of Despot Đurađ's treasure it was confirmed that the Ragusans received the above listed deposit (више реченоу похраноу). Further on they say that Despot Đurađ can take the treasure whenever he wants, for as long as he lives. After his death, the deposited objects belong to his wife Lady Jerina (Εἰρήνη), and after her death to her sons; they can take either the whole treasure or everyone of them his own share. However, if they want to take the abovementioned deposit, they have to present the list and the receipt, sealed by the envoys of the Lord Despot (А оу сѣи име вишереченоу похраноу поставише, а ми прѣмисмо оу сѣи име, догдѣ је живѣ господинѣ деспоть Гюргѣ, да је онѣ волианѣ оузети више реченоу похраноу на неговоу волю и

put, set, while *pohrana* is very rarely used in the meaning of *guarding, storing*, and sometimes of *depositum*, as well.

135 Stojanović, *Stare srpske povelje i pisma*, vol. I, p. 67, no. 70.

136 Solovjev, *Odabrani spomenici*, pp. 181 and 219.

137 Ibid., p. 206.

цю рече одъ нѣ оучинити. А по неговой самрѣти негова жена господа Іерина, а по Іеринини самрѣти трѣма синовомъ неговемъ дали имъ све на за се да оузети или всакому на се свои дню оузети; а када годѣ би хоти оузети више реченоу похраноу, да се не може оузети цю не би донесао ови исти записъ и листь веровани потъ печатю кою соу намъ оставили на листоу господина деспота речени поклісарые).¹³⁸

The Law Code of Stefan Dušan does not mention the contract of *depositum*, but article 125 regulates the innkeeper's responsibility (*stanjanin*, *станіанинь*)¹³⁹ for the loss of things:

Towns are not liable to the maintenance of officials. When a countryman come [in a town], let him go to the inn, either small or great, and let him hand over his horse and all that he hath, that the innkeeper take charge for him entirely. And when the guest leaves, let the innkeeper hand to him all that he hath received from him; and if anything be lost, let him pay its full value.

Градовомъ да нѣсть приселицѣ. развѣ кои иде жупіанинъ да ходи къ станіанинѣ, или малъ или великъ, да мѣ прѣда конь и станъ вѣсь, да га съблюдѣ станіанинъ съ вѣсѣмъ, и кѣда си поидѣ внѣзи гость да моу прѣда станіанинъ вѣсе цю мѣ боудѣ пріель. ако ли моу боудѣ цю погынѣло вѣсе да мѣ плати.¹⁴⁰

It seems that article 125 provides for a case of *receptum cautionum*,¹⁴¹ well known in Roman law: the innkeeper is responsible if anything is lost and the guest has a right to claim his goods (*actio in factum*).¹⁴² Constantine Jireček describes an actual case arising under this clause from the records of the courts of Dubrovnik for the year 1405. Five traders from the city arrived at Vučitrn, coming from Priština,¹⁴³ and entrusted their horses and goods to the innkeeper, who took charge of them and locked them up. As a result of an

¹³⁸ Ibid., p. 208.

¹³⁹ The word *stanjanin* is no longer in use in modern Serbian. Today the term *gostioničar* is in use for “innkeeper”.

¹⁴⁰ Burr, “The Code of Stephan Dušan”, p. 521; Novaković, *Zakonik*, p. 96; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

¹⁴¹ Cf. Taranovski, *Istorija*, vol. III, p. 117; Solovjev, *Zakonik cara Stefana Dušana*, p. 279.

¹⁴² D. IV, 9, 1, *Ulpianus libro quarto decimo ad edictum: Ait praetor: Nautae cautiones stabularii quod cuiusque saluum fore receperint nisi restituent, in eos iudicium dabo*. Cf. D. IV, 9, 3; *ex hoc edicto in factum actio proficistur*.

¹⁴³ Both cities are today in Kosovo.

incident relating to the unexpected arrival of a Turk, something was lost. The merchants brought an action against the innkeeper under this clause and won their case.¹⁴⁴

2.5 Hire

Hire (*locatio conductio*, μίσθωσις, НАИЕМЪ, НАИМОВАНИЕ) was a contract whereby one party (*locator*) agreed to give to another (*conductor*) the use of something, or to perform some service in return for a fixed sum (*merces certa*). Roman law had three types of *locatio conductio*: a) *locatio conductio rei*, in which the *locator* allows the *conductor* the use of a *res corporalis* or *incorporalis*; b) *locatio conductio operarum*, in which the *locator* puts his services at the disposal of the *conductor*; c) *locatio conductio operis*, in which the *locator* puts out work to be performed by the *conductor*.

In Byzantine and Serbian mediaeval law there is no such a distinction. All three types of *locatio conductio* were placed in Chapter XVII of the *Procheiron* under the title Περί μισθώσεως (С) НАИМОВАНЫХЪ in Saint Sabba's Serbian translation), which contains 28 rules.¹⁴⁵ However, Matheas Blastares took in his *SynAGMA* only four provisions from the *Procheiron* and put them in Chapter M-12. The Greek text has the same title as the *Procheiron*, while in Serbian translation we read О НАИМѢХЪ.¹⁴⁶ They run as follows:

- a) "If a hirer (*conductor*, ὁ μισθωσάμενος, НАЕМЫ ІЕ) of agricultural land (τὸν ἀγρὸν, село)¹⁴⁷ leaves the land without any reason (χωρὶς αἰτίας, КРОМѢ ВИНЫ), before the agreed period (πρὸ συμπληρώσεως τοῦ χρόνου, ПРѢЖДЕ СЪ ВРЪШЕНІА ВРѢМЕНЕ), he has to pay the rent (μισθόν, НАЕМЪ) for the whole year";
- b) "If someone hires a horse to transport a cargo and hurts it because he put burden on it beyond measure, he has to compensate the damage" (Ὁ μισθωσάμενος ἵππον ἐπὶ τὸ βαστάσαι τι δῆλον, καὶ βαρύτερον ἐπιθεῖς καὶ βλάβης, ἐνέχεται ὑπὲρ τῆς βλάβης; НАЕМЫИ КОНІА ІЕЖЕ ПОНѢСТИ НѢУГО ІАДВЛІЕН'НО, И ТѢЖѢАНІШЕ ВЪЗЛОЖИВЪ ВРѢДИТЬ, ПОВИН'НЪ ІЕСТЬ О ВРѢДОУ);
- c) "If someone needs a horse to till a certain place (ἕως ὠρισμένου τόπου, ДО ΟΥΣΤΑΒΛІЕН'НАГО МѢСТА), but he takes or sends it even farther [from that place] and if the hirer sees that a horse was injured or perished (τὴν συμ-

144 K. Jireček, "Stanjanin", *ASPh* 14 (1892), pp. 75–77. See also S. Šarkić, "Depositum in Roman, Byzantine and Serbian Mediaeval Law", in *ANTECESSOR, Festschrift für Spyros N. Troianos*, ed. V. Leontaritou, K. Bourdara, and E. Papagiani, vol. 11 (Athens 2013), pp. 1587–1594.

145 Zepos, vol. 11, pp. 159–162; edition Dučić, pp. 311–315; edition Petrović, pp. 290a–291b.

146 Edition Ralles and Potles, p. 373; edition Novaković, p. 393.

147 The Serbian translator used the word *selo* (село), which usually means village.

βᾶσαν ἐπ' αὐτῷ βλάβην ἢ θάνατον, прилогучивши се томоу вѣдѣ или смѣрѣ), he has to indemnify the owner of the horse";¹⁴⁸

- d) "The *locator* cannot break a contract before the agreed period without the consent of a *conductor*, even if somebody has offered higher rent (καὶν ἄλλος αὐτοῦ πλείονα εἰσαγάγη μισθώματα, аще и инъ множае того вѣноситъ банимы), if the hirer pays his rent on time".¹⁴⁹

So-called "*Justinian's Law*" does not mention explicitly the contract of hire, but in several articles it speaks of it using different terms. For example, article 13 runs as follows: "If someone gives vineyard or something else to somebody to be cultivated, and if the result was not as promised, then the owner may take back the given thing with no explanation, even if [the hirer] worked hard" (Аще кто даст виноградъ, или ино цю дръгомоу да направитъ да аще не оузвѣршитъ како се е вѣщцалъ направити да си е волнь господарь оузети свое безъ рѣчи, аще и много тѣру дѣль ест винзи).¹⁵⁰ Articles 14, 15, 16 and 23 speak of share-cropping (исполи). If someone takes a vineyard in share-cropping (исполи) and, when the time comes, does not prune it and spade it and sprinkle [with powder] it as needed (тѣре на вѣрѣме не вѣрѣже и оускопа и вѣпраши како ест подобно), his effort will be futile (article 14).¹⁵¹ If a sharecropper (исполникъ) changes his mind (раскаѣв се) and informs on time the owner of a vineyard that he is not able to work in the vineyard, he will not be responsible if the owner (господинъ винограда) did not cultivate a vineyard (article 15).¹⁵² If the owner of the vineyard went somewhere, and the sharecropper (исполникъ) leaves the vineyard (а си раскаѣв се вѣставиъ виноградъ) without informing him, when the owner comes back, the sharecropper has to pay double the value of the fruits (article 16).¹⁵³ If a farmer takes land as a sharecropper (Аще дѣлатель оузметъ нивоу испולי) and does not cultivate it on time but sows a seed without the cultivation of the soil (нъ посѣетъ сѣме на лице), all the fruits will be taken from him and he will be treated as a liar who lied to the owner of the field (article 23).¹⁵⁴

Serbian charters do not mention the contract of hire. Saint Stephen's chrysobull even forbids that land belonging to the Church can be the object of hire (Земля црьков'на ни оу вѣх ни оу подорание ни оу сѣдениѣ, никомоу да се не даѣ).¹⁵⁵ As we can see, the text does not use the expression *наѣмъ* (hire), but

148 Cf. D. XIX, 2, 30; *Basilika*, XX, 1; *Procheiron*, XVII, 21.

149 Edition Ralles and Potles, p. 373; edition Novaković, p. 393.

150 Edited by Marković, p. 56.

151 *Ibid.*, p. 56.

152 *Ibid.*, pp. 56–57.

153 *Ibid.*, p. 57.

154 *Ibid.*, p. 58.

155 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

podoranije (подораниѣ), coming from the verb *orati* (орати) = to plough, which designates the position of hirer.

The only legal document that mentions a hire of Church land is the charter of Emperor Stefan Dušan and his son King Stefan Uroš to Jacob, Metropolitan of Serres (1352–1353). Tsar Dušan gave the church of Saint Nicholas to Metropolitan Jacob, and he says that “this land, belonging to the church of Saint Nicholas, nobody can cultivate by force, only those persons who got it from Metropolitan as a part of tithe” (И сиюзи земаю выше писанною цркви светаго Николи никто по силѣ да ю не тежѣи, тькмо кому ю даѣ митрополитъ из десѣтка).¹⁵⁶

In the Serbo-Slavonic translation of the inventory (*praktikon*, πρακτικόν, from *prasso* = to do, to exact)¹⁵⁷ of Hilandar monastery’s estates in a region of Strymon (Struma),¹⁵⁸ we can find the word *abelopahto* (αβελοπαχτο, ἀμπελόπαχτον). Scholars do not agree on the meaning of this term, but it seems that it was rental fee for a vineyard.¹⁵⁹ The document says that in the village of Gradec (Градец) foreign serfs have to pay two perpers for *abelopahto* (Ѫ томъжде сѣле αβελοπαχто удъ тѪждихъ парикъ .В. перъперѣ).¹⁶⁰

2.6 Loan

Loan (*mutuum*, *fenus*, δάνειον, заемъ) is delivery by one party to and receipt by another party of a sum of money upon agreement, to repay it without (Roman *mutuum*) or with (Roman *fenus*) interest. As we already saw, Byzantine and

¹⁵⁶ Edited by G. Bojković, *SSA* 15 (2016), p. 94.

¹⁵⁷ *Praktikon* is an inventory listing the taxes, as well as the demesne (or domain) land and paroikos households held by a single individual or religious institution, that an imperial tax assessor (*apographeus*, *anagrapheus*—ἀπογραφεύς, ἀναγραφεύς) either copied from imperial cadastral records (*thesis* or *biblion*) or compiled on the spot to be transcribed later into such records and delivered to the holder. See M. Bartusis, “Praktikon”, in *ODB*, p. 1711.

¹⁵⁸ Today in North Macedonia. According to G. Ostrogorski, “Vizantijskie piscovije knigi” [“Byzantine Praktikons”], *Byzantinoslavica* 9 (1948), pp. 203–306, the document was published in November 1300 (pp. 216–217).

¹⁵⁹ According to V. Mošin, “Akti iz Svetogorskih arhiva, III. Hilendarski praktik” [“Acts from Holy Mountain Archives, III. Hilandar Praktikon”], *Spomenik SKA* XC1, drugi razred 70, Belgrade 1939, p. 214. The author thinks that the document was edited in November 1315. Solovjev, in his edition of the text (*Odabrani spomenici*, pp. 161–165), thinks that the document was published in November 1357 or 1372, and he says that the meaning of the word *abelopahto* is not clear. According to him it must be some kind of tax (p. 164, note 5). That is the opinion of Russian scholar T.I. Uspenskiy, expressed already in 1883 (*Materiali dlya istorii zemlevladieniya v XIV veke* [Materials concerning the History of Agriculture in the 14th Century] [Odessa 1883], pp. 40–41), who thought that Hilandar Praktikon was edited in 1346 or 1361.

¹⁶⁰ Mošin, Ćirković, and Sindik, *Zbornik*, p. 313.

Serbian legal miscellanies treat the matter of loan always in the same chapter with the matter of pledge (see Chapter 12, section 5).

In Roman law, in the case of money, it could be required to pay interest if there had been a special stipulation to that effect.¹⁶¹ The rate of interest under the XII Tables was limited to 12 %. In 345 BC this was reduced to 6 %. Under Justinian, interest was not allowed to be recovered to a greater amount than twice the principal. Compound (repeated or doubled) interest, so-called *anatocism* (from Greek ἀνά = up, upon, through, over + τοκισμός = usury, from verb τοκίζω = to lend on interest and τόκος = interest, offspring; Latin *anatocismus* or *usurae usurarum*) was forbidden. The rates in Justinian's time were: a) maritime loans: 12 % p.a.; b) business loans: 8 % p.a.; c) ordinary, non business loans: 6 %, p.a.; d) loans to farmers and persons of high rank: 4 % p.a.¹⁶²

Under the influence of the provisions of the Scriptures,¹⁶³ the canons of Christian Church councils anathematized the taking of interest as usury (τοκοληψία, lit. "receipt of interest").¹⁶⁴ Following Christian ideology, Byzantine legislation tried to forbid any taking of interest, treating it as usury. Already, the *Ecloga* has not a single provision on usury: neither permission nor prohibition. But the *Procheiron* explicitly forbids the taking of interest as something "without dignity of Christian State and forbidden by the Legislation of God" (ἀλλ' οὖν ὡς ἀναξίαν τῆς ἡμῶν τῶν χριστιανῶν πολιτείας ἀπευκταίαν εἶναι κεκρίκαμεν, ἅτε παρὰ τῆς θείας νομοθεσίας κεκωλυμένην, нь мы оубоѣахомъ ѣако не достоина єѣ нашего христїаньскаго житїа, вѣметьна быти расоудихомъ ѣаже божьствнымъ законымъ възбранена соуть).¹⁶⁵ The same prohibition was repeated in the *Epanagoge/Eisagoge*.¹⁶⁶

However, the taking of interest became a need of economic life, so the *Novella* LXXXIII of Emperor Leo VI allowed interest with a rate of 4 % p.a. (ἀπὸ τρίτος ἑκαστοστῆς, "three-hundredth parts"),¹⁶⁷ and the *Basilika* repeated the provisions of Justinian's legislation.¹⁶⁸ Byzantine legal collections at a later date contain the prohibition of interest from the *Procheiron*, but at the same time the provision from Emperor's Leo VI *Novella*. Such a confusion can also

161 *Cod. Iust.* IV, 32, 22.

162 *Cod. Iust.* IV, 32, *De usuris* (28 laws); see also Curzon, *Roman Law*, p. 140.

163 Exodus, XX, 25; Leviticus, XXV, 36; Deuteronomy, XXIII, 19; Lucas, VI, 35.

164 Apostolic Canon 44; Canon 17 of the First Council of Nicaea; Canon 10 of the Council in Trullo.

165 *Procheiron* XVI, 14, Zepos, vol. II, p. 159; edition Dučić, p. 310; edition Petrović, p. 289b–290a.

166 *Epanagoge* XXVIII, 1, Zepos, vol. II, p. 320.

167 Edited by P. Noailles and A. Dain, *Les Nouvelles de Léon VI le Sage* (Paris 1944), pp. 280–283.

168 *Basilika* XXIII, 3.

be found in the *Syntagma* of Matheas Blastares. Chapter Π-11 has a title “On greediness and snatching away” (Περὶ πλεονεξίας καὶ ἀρπαγῆς, Ο ΛΗΧΟΙΜΕΤΕΒ̄ И ХИЩЕНИ), and it exposes the VI rule of Gregory of Nyssa, which says that Saint Apostle called greediness a kind of idolatry (τὸ τῆς εἰδωλολατρείας, идоолослогъ-женїа видѣ).¹⁶⁹ The text does not explicitly mention usury, but it is clear that Saint Gregory makes an allusion to it and forbids it to the clergy. More details on interest are contained in Chapter T-7, entitled “On the prohibition of taking usury to all clerics” (“Οτι τόκους λαμβάνειν ἀπείρηται παντὶ κληρικῷ, καὶ περὶ τόκων, ꙗко лихвы въземаѣи отреченно ꙗсть в̄сакомоу причѣтнику”). The first part of the chapter exposes the ecclesiastical rules (canons) which forbid the taking of interest to the clergy: XLIV rule of Saint Apostles; XVII rule of the First Council; X rule of the Sixth Council; IV rule of Laodicean Council; V rule of Carthaginian Council; and XIV rule of Basil of Caesarea. The second part of the chapter contains secular laws (νόμοι, закони) on interest: 1) prohibition of usury, taken from the *Procheiron* (XVI, 14); 2) rates of interest, taken from the *Basilika*, repeating Justinian’s legislation;¹⁷⁰ 3) provision of Roman law that says: if someone pays interest more than was demanded, the surplus will be incorporated into the principal; 4) compound interest (*anatocism*) was forbidden.¹⁷¹

Serbian charters and the Law Code of Stefan Dušan do not mention the contract of loan. However, Tsar Dušan’s chrysobull to the monastery of Saint Archangels Michael and Gabriel forbids the monks from loaning money at interest. The penalty would be expulsion (и кто се оврѣте калогѣрь ... динаре даѣ оу каматоу—да се ижде).¹⁷² Beyond any doubt this means that in practical life a loan of money existed and that the borrower had to give interest, but our source does not mention the rates. The same chrysobull uses a word *kamat-nik*, which normally means usurer, but the context of the charter excludes this. The text says that “with the Tsar’s grace and will, Kesar [Caesar] Grgur gave to the church of Saint Archangels *usurer Dabiživ*, who has to give [to the church] 18 foxes yearly” (И съ милостию и хотѣниемъ царство ми приложи кесарь Грьгоръ црькви царства ми Арххаггелоу Дабижива каматника, да даѣ за годице .и. лициць).¹⁷³ It is really difficult to explain why a pious donor would give to

169 Edition Ralles and Potles, pp. 430–431; edition Novaković, pp. 455–456.

170 *Basilika* XXIII, 3.

171 Edition Ralles and Potles, pp. 473–476; edition Novaković, pp. 501–504.

172 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 112. For interest the text used the word *kamata* (from Greek κάματος = fatigue, toil, labour), which survives in modern Serbian.

173 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 91. Cf. S. Šarkić,

the church a usurer. Obviously, the word *kamatnik* in Saint Archangel's chryso-bull had some different meaning, though its meaning today remains unclear. However, we find the word *kamatnik* one more time in Serbian documents: in the charter of Constantine Dragaš¹⁷⁴ of 26 March 1388, confirming the estates that his half-brother Dmitar¹⁷⁵ gave to the monastery of Saint Ascension in the City of Štip (today in North Macedonia). We read that a certain Vasilije Budović donated a garden to the monastery, which he bought from the usurer Kalo-jan (Приложѣ Василиѣ Бѹдовѣиѣ врьѣть на ономѣ странѣ цю кестѣ коупилѣ одѣ Калѹѣѣѣ каматника).¹⁷⁶

2.7 Commodatum

Commodatum (τὸ εἰς χρῆσιν διδόμενον) was the gratuitous loan of a *res* for use. *Commodatum* already existed as a type of contract under Justinian I (D. XIII, 6), manifestly an artificial term that can be distinguished from loan and hire only

"Il contratto di *fenus* e la difesa dei debitori contro l'usura nel diritto medievale serbo (riguardo all'influenza del diritto Greco-Romano)", *Roma e America. Diritto Romano comune, Rivista di diritto dell'integrazione e unificazione del diritto in Euroasia e in America Latina* 40 (2019), pp. 41–44.

174 Constantine Dragaš (Константин Драгаш, Κωνσταντῖνος Δραγάσης) was a Serbian magnate who ruled a large province in eastern Macedonia under Ottoman suzerainty, during the fall of the Serbian Empire. His father was the despot and sebastokrator Dejan, who had held Kumanovo-region (today in North Macedonia) under the rule of Stefan Dušan. Constantine's mother Theodora Nemanjić was a half-sister of Stefan Dušan (daughter of Stefan Dečanski and Maria Palaiologina). He succeeded his older brother John (Jovan, Јован), who had been an Ottoman vassal since the battle of Maritsa (1371). Constantine's daughter Helen (Јелена, Ἑλένη Δραγάση) married Byzantine Emperor Manuel (Μανουήλ) II Palaiologos in 1392. Their many children included the last two Byzantine Emperors: John (Ἰωάννης) VIII (1425–1448) and Constantine (Κωνσταντῖνος) XI (1449–1453). Constantine Dragaš fell at the battle of Rovine (unknown place, probably near the Argeş River in south-eastern Wallachia, today in Romania) on 17 May 1395, serving the Ottomans, led by Sultan Bayezid I, against Wallachia, led by Duc Mircea the Elder (Voivod Mircea cel Bătrân), and fighting alongside Serbian magnates Stefan Lazarević and Marko Mrnjavčević.

175 In the text of the charter Constantine calls Dmitar "brother of my lordship, Dmitar" (БРАТЬ ГОСПОДСТВА МИ ДМИТРЬ). According to Bulgarian historian Christo Matanov, Dmitar was Constantine's half-brother: Dejan's son from his first marriage with noblewoman Vladislava. See "Proishod na roda Dragaši (Deyanovichi)" ["Origins of the Family Dragaš (Dejanovići)"], *Vekove* 6 (1984), pp. 34–37, and *Knyazevstvo na Dragaši. Kam istorijata na Severo-istočnata Makedonija v predosmanskata epoha* [Principality of Dragaši. Contributions to the History of Northeastern Macedonia in the Pre-Ottoman Epoch] (Sofia 1997), pp. 23, 27, 256–257.

176 Novaković, *Zakonski spomenici*, p. 766, para. VIII. The charter has a signature "In Christ the God the true-believing Lord Costadin" (Въ Христа Бога благовѣрны господинъ Костадинъ). *Ibid.*, p. 768.

with difficulty because of the unclear terminology of Byzantines with regard to ownership. In mediaeval Serbia it was mentioned only once: a certain Mar-ena with her sons Kaloyan, Borislav and Radoslav, appoints a certain Staniša as a parish priest of the church of Saint Saviour and lends him in gratuitous loan liturgical inventory—books, vessels and vestments (second half of the 14th century—beginning of the 15th century, 9 March, Sopište near Skoplje). The list of a lent things for use was presented in two separated acts (И прѣдасмо мѣ: тетравангелъ новоизводнѣ, ѿ. ѿ. комата агириста новоизводна, и дрѣги агиристъ ветѣхъ, праксъ, теутокаръ, часословыць, дамаскинѣ, минен свемѣ годициѣ, и дрѣги минен вѣдѣ ферь-фара до секътемра, и трети минен, еднѣ мѣсець катад-невнѣ секътеврѣ, псалтирь, летѣргина, молит-вникъ, ѿ. тринда, ѿ. катапетазме, врьтъ конь свѣте Петке, лозыѣ ѿ Сопицихъ, и дрѣги ѿ Стене). The final lines of the document contain six names of witnesses and the name of *nomik* Kaloyan, who composed the act.¹⁷⁷ The duties of the lender and the borrower were not fixed.

2.8 Partnership

Partnership (*societas*, κοινωνία) was a contract by which two or more persons, with a common purpose in view, combined their property, or by which one contributed his labour and another his property. In Serbian mediaeval law we can find a special type of partnership in article 19 of so-called “Justinian’s Law”:

If two farmers put together at sowing time and one partner declares his intention to retire, but the seeds were already sowed, the partnership could not be dissolved. If the farmer, who wants to give up, has already ploughed [a field] again, the other partner has to plough again as well, and after that they can dissolve [the partnership]. If the other side has nobody to plough with, the partner [who wants to give up] cannot abandon him.

Аще два дѣлателя съдружита се въ врьме посѣянїа и оусхокиє едїна страна втлоучити се. Аще се бѣде и сѣме посѣяло, да се не раздѣлетъ. Аще ли естъ разарає впонови, да впонови и дрѣгы такожде, потомъ да се раздѣлитъ. Аще ли друуга не имать с кым кїе врати, да га нѣ вольнѣ встави. ¹⁷⁸

¹⁷⁷ Bubalo, *Srpski nomici*, pp. 253–254.

¹⁷⁸ Edited by Marković, p. 57.

As we can see, the text does not use the term partnership (*ortakluk* in modern Serbian).

This type of partnership arose from agreement between parties. The intention to create a partnership (*affectio societatis*) was free, but its termination was limited.

Other types of partnership known from Roman law cannot be found in mediaeval Serbia.

The Law of Wills and Succession

1 Testate and Intestate Succession

Where a deceased person left a will (*testamentum*) and succession took place according to the terms of that will the succession was said to be testate. Where the deceased person did not leave a will succession was said to be intestate. The general rule of Roman law was that no one could die partly testate, partly intestate (*nemo pro parte testatus, pro parte intestatus decedere potest*).

We only have a small amount of data from the Serbian legal sources on the law of wills and succession: no will has been preserved, and the Law Code of Stefan Dušan regulated intestate succession only in articles 41 and 48. It seems that the commoners' class, living mostly in extended families (or communal households, the so-called *zadruga*),¹ succeeded to their property according to the rules of customary law, while noblemen accepted the provisions of Byzantine law.

In Serbian legal miscellanies, translated from Greek, the institutes of testate and intestate succession were rather thoroughly presented. So-called *Zakon gradski* (Serbian translation of the *Procheiron*) contains the following chapters referring to the law of succession: Chapter 21, "On the will of persons not under the *patria potestas*" (Ω ЗАВѢТѢ САМОВЛАСТЫНЫХЪ, Περί διαθήκης αὐτεξουσίων); Chapter 22, "On the will of those under the *patria potestas*" (Ω ЗАВѢТѢ СОУЩИХЪ ПОДЪ ВЛАСТІЮ РОДИТЕЛѢ СВОИХЪ, Περί διαθήκης ὑπεξουσίων); Chapter 23, "On the will of freedmen" (Ω ЗАВѢТѢ СВОБОЖДЕННЫХЪ, Περί διαθήκης ἀπελευθέρων); Chapter 24, "On the will of bishops and monks" (Ω ЗАВѢТѢ ЕПИСКОПѢ И МОНАХЪ, Περί διαθήκης ἐπισκόπων καὶ μοναχῶν); Chapter 25, "On the invalidation of a will" (Ω ПРΕВРАЩЕНІИ ЗАВѢТА, Περί ἀνατροπῆς διαθήκης); Chapter 29, "On the codicil, i.e. on the supplement to a will" (Ω КОДИКЕЛЛѢ, РЕКЪШЕ У ИСПЛНЕНІЕ ЗАВѢТА, Περί κωδικέλλου);² Chapter 30, "On heirs" (Ω НАСЛѢДНИЦѢХЪ, Περί κληρονόμων); Chapter 32, "On division" (Ω РАЗДѢЛЕНИИ, Περί φαλκι-

1 On *zadruga* see Chapter 15, dedicated to family law.

2 In Roman law, the codicil represents a separate document (table) wherein a legacy was entered in case it was not included in a will. However, the *Procheiron* defines the codicil as a supplement (amendment) to a will, being the consequence of insufficient reflection on the side of a testator. *Procheiron* XXIX, 1, Zepos, vol. II, p. 183; Κωδικέλλος ἐστὶν ἐλλίπους ἐν διαθήκῃ γνώμης τοῦ διατιθεμένου ἀναπλήρωσις.

δίου);³ Chapter 33, “On disinherited persons” (Ѡ ѡтмѣненыхъ ѡтѣ наслѣдїа, Περὶ ἀποκλήρων); Chapter 35, “On gifts or legacies bequeathed before or after death” (Ѡ дарѣхъ даѣенихъ въ завѣтѣ или въ живѡтѣ или по смърти, Περὶ λεγάτων); Chapter 36, “On trustees” (Ѡ приставьницѣхъ, Περὶ ἐπιτρόπων); Chapter 37, “On when creditors should take action against heirs” (Ѡ томъ когдѣ продаѡбаѣтъ заимодавцыѣмъ потѣзати наслѣдникиы сконьѣавьшихъ се, Περὶ τοῦ πότε δεῖ ἐνάγειν τοὺς δανειστάς κατὰ τῶν κληρονόμων τῶν τελευτησάντων).⁴ The *Synagma* of Matheas Blastares placed all provisions on intestate and testate succession in the same chapter (K-12) under the title “On heirs and the disinheritance of sons or parents” (Περὶ κληρονομίας καὶ ἀποκλήρων υἱῶν ἢ γονέων, Ѡ наслѣдоваїїи и изгнанїю ѡтѣ наслѣдѣства сыновѣ или родителѣ),⁵ incorporating almost all the rules of the *Procheiron*.

2 Intestate Succession (ἡ κληρονομία ἐξ ἀδιαθέτου)

2.1 Byzantine Law

Byzantine law on intestate succession, especially the *Procheiron* and *Basilika*, kept all the basic principles of Justinian's legislation.⁶ However, the intention

3 The Greek term φαλκίδιος originates from the *lex Falcidia*, promulgated in 40 BC, providing for a maximum of three quarters of a person's estate to be bestowed as a legacy, entitling an heir to at least a quarter of the inheritance (Gaius, *Institutiones* II, 227: *Lata est itaque lex Falcidia, qua cutum est, ne plus ei legare liceat quam dodrantem, itaque necesse est, ut heres quartam partem hereditatis habeant*). Justinian's *Novella* XVIII, 1, issued in 536, provided that this part had to be one-third of the inheritance, if a testator had up to four children, and half if a testator had more than four children. Nevertheless, the term φαλκίδιος was not discarded; see e.g., the heading of the *Procheiron*'s Chapter xxxii.

4 Ed. Dučić, pp. 323, 327, 329, 330, 331, 345, 346, 353, 355, 377, 378, 379; Zepos, vol. II, pp. 167, 170, 171, 172, 173, 183, 188, 189, 203, 204, 205; ed. Petrović, pp. 294b, 296a, 296b, 297a, 297b, 303a, 305b, 306b, 314b, 315a, 315b.

5 Edition Ralles and Potles, pp. 324–329; edition Novaković, pp. 342–347.

6 By *Novella* CXVIII (AD 543) and *Novella* CXXVII (AD 548) Justinian refashioned the order of succession. The result of this was: a) agnation was replaced by a relationship based on blood ties; b) males and females were treated equally; c) a new order of succession appeared, consisting of four classes. Earlier classes excluded later ones and where members of an earlier class were unable or unwilling to accept, persons within the next class could claim.

1) *Descendants*—This class included those emancipated and not emancipated, adopted or natural, male and female. Those who succeeded in the first degree took *per capita*; those in a remoter degree took *per stirpes*. Closer descendants excluded the more remote.

to limit the right of collaterals in a remoter degree to take inheritance is evident. Restriction was usually done in favour of the Church. So, Emperor Constantine VII Porphyrogennetos ordered (*Novella* XII, between 945 and 959) that in the case where there are no heirs of the whole blood, one-third of the inheritance had to be given to the Church (“given for the soul”, δωρεῖσθαι ψυχῆς).⁷ In 1306, Patriarch Athanasios and the Council (Synod, Σύνοδος) of Constantinople, promulgated a decision, confirmed by Emperor Andronikos II Palaiologos (*Novella* XXVI), that from the inheritance of the serfs one-third would be given to the Church (“for the soul”), one-third to the landlord and only one-third to the heirs. If there were no heirs, the inheritance would be divided between the landlord and the Church. A second conclusion of the same Council ordered that in a case of the death of an under age person, who already had inherited from a deceased parent, the inheritance would be divided into three parts: one-third to the remaining parent, one-third to the parents of the deceased parent and one-third to the Church. The provision was valid for all social classes.⁸

2.2 Serbian Sources

The Serbian sources mention only intestate succession of hereditary estates belonging to the nobleman class. For example, King Milutin's charter presented to the Žaretić (Lovretić) family from the city of Bar confirms the right of inheritance of the Žaretić (Lovretić) nobleman family, saying that their ascendants had the same right (такъжде и краљевство ми потвърдиѣ Ловретикемъ Андѣри с братиѣмъ цю имъ ѡтѣць дръжалъ и стрѣць имъ Маринъ ѡ матерѣ краљевства ми тогѣ да си и ѡни дръже тѣмъжде ѡтверждѣнѣмъ и заклѣтѣмъ, догдѣ сѡ вѣрни краљевствѣ ми).⁹

Article 41 of Dušan's Law Code states: “If any lord have no child, or if he have and it die, then upon his death the inheritance remains empty until there be

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- 2) *Ascendants and brothers and sisters of the whole blood*—Parents shared with brothers and sisters of the whole blood. A grandparent succeeded only where brothers, sisters and parents did not take. The child of a dead brother or sister represented its parents.
 - 3) *Brothers and sisters of a half blood*—Their children could take by representation.
 - 4) *All other collaterals*—Those in the same degree took *per capita*. There was no representation.

The next class to take would be husband and wife. They were not included in the *Novellae* of 543 and 548, but were mentioned in this connection in the *Basilika*. See Curzon, *Roman Law*, pp. 125–126.

7 Zepos, vol. I. pp. 235–238.

8 Ibid., pp. 533–536.

9 Edited by S. Božanić, SSA 6 (2007), p. 12.

found someone of his kin up to the third cousin,¹⁰ and to him shall the inheritance fall” (Кои властѣлинь, не и оузима дѣце, али пакы оузима дѣцѣ, тере оуимрѣ, по еговѣ сымрѣти бащина поуѣта остане, до гдѣ се вѣрѣте вѣт ѿ негова рода до третѣга братѣчада тѣзѣи да има еговѣ бащинѣ).¹¹ As we can see, the first heirs were children, male and female. It appears that in Serbia there was no form of Salic Law of non-limited inheritance in the male line.¹² Collaterals could inherit “up to the third cousin”, a translation of the Greek term *τρισεξαδέλφος*, meaning up to the eighth degree of blood relationship. The expression can be found in the *Syntagma* of Matheas Blastares (B-8): “Marriage is allowed in the eighth degree of a blood relationship. It is not forbidden to take the third cousin or granddaughter of the second cousin” (Εἰς γε μὴν τὸν ἦ. βαθμὸν προβαίνων ὁ ἐξ αἵματος γάμος, συγκεχώρηται· τὴν γὰρ τρισεξαδέλφην, ἢ τὴν ἐγγόνην τοῦ δισεξαδέλφου λαμβάνειν, Κῶ οσμί же степень происходеи же отъ крьке бракъ проиень кѣтъ; третню до братоуѣдоу или вѣноукоу вѣтораго братоуѣда поимати никакого же имать вѣзбранѣиѣ).¹³

Inheritance without an heir was called “withered” (водоумрѣтна), and it belonged to the monarch. The Law Code of Stefan Dušan does not explicitly define such an arrangement, but in the Tsar’s chrysobull confirming the founding of the Episcopate of Zletovo (1 September 1346–31 August 1347),¹⁴ we read: “Kraimir’s water-mill which remained withered, My Majesty gave it to the [monastery of] Saint Archangel” (И цю кѣтъ водѣница Краимирова водоумрѣта и тоу приложи светое царство ми светому Архаггелу).¹⁵ So, a water-mill that was a hereditary estate of a certain Kraimir remained without heirs. As the Tsar had hereditary rights on it, he took a water-mill and gave it as a present to the Church.

Article 48 runs as follows: “And when a lord dies, his good horse and arms shall be given to the Tsar, and his great robes of pearls and golden girdle, let his

10 The Serbian word is *bratučed* (Serbian Cyrillic братучед, lit. “brother’s child”), and it includes nieces as well as nephews.

11 Burr, “The Code of Stephan Dušan”, p. 206; Novaković, *Zakonik*, p. 37; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

12 See also article 48 of the Code, which permits a daughter to sell her jewels and raiments inherited from her father.

13 Edition Ralles and Potles, pp. 128–129; edition Novaković, p. 133.

14 This document was created as a consequence of a decision made by a State Council held in Skopje in 1347. It was decided to establish the Episcopate of Zletovo with a seat at the monastery of Saint Archangels in Lesnovo, endowment of Despot Jovan (John) Oliver. Zletovo (Serbian Cyrillic Злетово) is today a village in the Municipality of Probištip of North Macedonia.

15 Edited by S. Mišić, *SSA* 13 (2014), p. 186.

son have them and let them not be taken by the Tsar: and if he have no son, but have a daughter, then his daughter is free to sell or give it freely" (КѢДА ОУМРѢ ВЛАСТѢЛИНЬ, КОНЬ ДОБРѢИ И ОРУЖІЕ ДА СЕ ДАЕ ЦАРЬ, А СВИГА ВЕЛИКА БИСЕРНА, И ЗЛАТИ ПОЯСЪ ДА ИМА СЫНЬ МЪ И ДА МЪ ЦАРЬ НЕ ОУЗМЕ. АКО ЛИ НЕ ОУЗИМА СЫНА, НЪ ИМА ДЪЩЕРЬ, ДА ІЕСТЬ ТОМЪ ЗІИ ВОЛНА ДЪЩІИ И ПРОДАТИ ИЛИ ВДАТИ СВОБОДНО).¹⁶ The surrender of the horse and arms of a lord on his death to the monarch is what in English law was termed *heriot*—a customary tribute of goods and chattels, payable to the lord of the fee on the death of the owner of the land. "His good horse" has the meaning of "best horse", corresponding to the "best chattel" of the English law of *heriot*. The horse and weapons would be conferred afresh upon his successor, if a male of age.¹⁷ However, article 48 belongs more in a matter of public law.¹⁸

According to some fragments from Serbian charters we can conclude that estates could be inherited even in the commoner's class. For example, the Dečani chrysobull says that the inheritance right of a certain *protopop* (i.e. "chief priest") Prohor and his sons and grandsons and great-grandsons was "written and confirmed" (записаниѣ и оутврѣдження прѣпопѣ Прохороу и ѹговѣ дѣти, и вѣноучію и прѣвѣноучію).¹⁹ In the chrysobull presented to Saint Archangels' monastery, Tsar Dušan says that he settled some masons and gave them lands as a hereditary estate, to them and to their children (И присели царьство ми зъд'це ... и да имъ царьство ми землю ... да си имаю синези все оубащиноу и дѣтца ихъ).²⁰ We already quoted Saint Stephen's charter which says "that a widow, who has a little boy, should hold the whole village until her son is grown-up".²¹ It is perfectly clear that a villager's estate could be succeeded in the first degree—males only. Collaterals could not inherit because they were mostly living in so-called *zadrugas* (extended families) and they had their own lands.

16 Burr, "The Code of Stephan Dušan", p. 207; Novaković, *Zakonik*, p. 42; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

17 Cf. Burr, "The Code of Stephan Dušan", p. 207, comment on article 48.

18 See J. Kovačević, "Član 48 Dušanovog zakonika i insignije" ["Article 48 of Dušan's Law Code and Insignia"], *ИЗЗ* (1952), pp. 466–468; I. Božić, "Konj dobri i oružje" (uz član 48 Dušanovog zakonika) ["Good horse and arms" (on article 48 of Dušan's Law Code)], *Zbornik Matice srpske za društvene nauke* 13–14 (1956), pp. 85–92. See also R. Mihaljčić, "Konj", in *LSSV*, pp. 314–315.

19 Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 264.

20 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 110.

21 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465. See chapter I, 1.

3 Testate Succession

3.1 *The Concept of the Will*

Though the concepts of will and testament had been known to the Romans from the time of the Twelve Tables, and Roman lawyers discussed this legal institution at large, there is only a single definition of it. It was presented by the lawyers of Justinian at the beginning of the first chapter of book XXIII of the *Digests*, entitled *Qui testamenta facere possunt et quemadmodum testamenta fiant*. This is the fragment from Modestinus from the second book of his *Pandectae* (*libro secundo pandectarum*): *Testamentum est voluntatis nostrae iusta sententia de eo, quod quis post mortem suam fieri velit*,²² meaning that a will is the legal statement of a person's wish concerning what is to be done after their death. Modestinus' text also found its way into both the *Procheiron* and the *Basilika*, the Greek text being as follows: Διαθήκη ἐστὶ δικαία βούλησις ὧν τις θέλει μετὰ θάνατον αὐτοῦ γενέσθαι.²³ Saint Sabba adopted the complete text of the *Procheiron* (Законъ градьски in Slavonic), and in both the Greek and Slavonic texts Modestinus' definition is found at the beginning of Chapter XXI "On the wills of persons not under the *patria potestas*" (Περὶ διαθήκης αὐτεξουσίων, Ѡ завьѣтъ самовластныхъ).²⁴ In Serbian this would be: Завѣтъ кестъ правѣдныи съвѣтъ имъ же кто хоцетъ по смрьти его быти.²⁵ This rule was likewise incorporated into Matheas Blastares' *Syntagma*, also translated into Serbian, the slightly different Slavonic translation being: Заветаиѣ кестъ правѣд'но воленіе о иже аще кто хоцетъ по смрьти своѣи оустроѣномъ быти.²⁶

Thus, in transferring the term *will* into Serbian, the translators used both the words завьѣтъ and заветаиѣ,²⁷ with these terms referring to a promise, a bequest in the general sense.²⁸ The editors of Serbian legal miscellanies

22 D. XXVIII, 1, 1.

23 *Procheiron* XXI, 1 = *Basilika* XXXV, 1, 1.

24 Zepos, vol. II, p. 167; ed. Dučić, p. 323; ed. Petrović, p. 294b.

25 Ed. Dučić, p. 323; ed. Petrović, p. 294b.

26 Ed. Novaković, p. 217.

27 The exceptions are two surviving wills: one of a peasant from the vicinity of Dubrovnik and the other from Herceg (Duke) Stepan Kosača, dated 20 May 1466, both using the term testament (тѣстанѣньтъ, тѣстамѣнат, variant spelling). See Solovjev, *Odabrani spomenici*, pp. 177, 220, 225. In the will of Vlahuša Kuljašić from Yanina (March 1491), carved in Ston (Italian *Stagno*, today a city and municipality in the Dubrovnik-Neretva county of Croatia) we see the formula: "Vlahuša Kuljašić during his life leaves by will his misery behind himself" (Влахуша Кулашићъ за живота свога опоручиѣ свою мукъу наконъ себе). Solovjev, *Odabrani spomenici*, p. 227.

28 Novaković, *Syntagma*, p. 6: Правила же оци своѣа тѣхъ наменоваше заветѣиѣа (διατάγματα), and p. 16: нь на иже съ прѣзоровнымъ заветаиѣмъ (διαθέσει).

moreover synonymously used the Greek calque ΔΙΑΤΑΞΗ (διάταξις). Therefore, e.g. part Д-4 of the Serbian translation of the *Complete Syntagma* was entitled О ЗАВЕЩАНІИ, while in the table of contents the title of that section was marked as О ЗАВѢТѢ, РЕКЪШЕ ДІАТАКЪСИ (“On wills, i.e. diataxes”).²⁹ Article 2 of the so-called “Justinian’s Law” begins with the words: АЦЕ КТО ДІАТАΞИ ПИШЕТЪ НѢКОМОУ (“If somebody writes a diatax for someone”),³⁰ and likewise in the charter of Despot Đurađ Branković, issued in 1428–1429 and confirming the hereditary estate to the great headman (*veliki čelnik*) Radič, it was written: ЗАПИСАВШИ МОУ ОУ СВОИ ДІАТАСЪ (“written in his diatax”).³¹

Almost all provisions of the *Procheiron* on testate succession were incorporated in Matheas Blastares’ *Syntagma* and its Serbian translation: Chapter Δ (Д) - 4, Περί διαθήκης, О ЗАВЕЩАНІИ (“On wills”); Chapter К-12, Περί κληρονομίας, καὶ ἀποκλήρων υἱῶν ἢ γονέων, О НАСЛѢДОВАНІИ И ИЗГНАНІЮ ОТЪ НАСЛѢДСТВА СЫНОВЬ ИЛИ РОДИТЕЛЬ (“On heirs and the disinheritance of sons or parents”); Chapter К-38, Περί κωδικέλλου, О КОДИКЕЛѢ (“On codicils”); Chapter Φ-1, Περί Φαλκιδίου, О ФАЛКІДІИ (“On the Falcidian Law”).³²

3.2 Serbian Sources

Thus, all of the principles of Graeco-Roman law referring to testate succession are present in Serbian legal miscellanies. Yet which of these were actually applied? The fact is that not a single will survives from that time³³ and there is not one article of Dušan’s Law Code mentioning this legal institution—though this certainly does not mean that it was unknown in Serbia. “Although probably a large number of inheritances remained undivided as a collective property” (“Мада је вероватно велики део заоставштина остајао у неподељеном задружном власништву”),³⁴ individual principles of free disposition over the property included in a will, typical for Graeco-Roman Law, are apparent in Serbian legal documents.

Article 40 of Dušan’s Code proclaimed the right of noblemen to dispose freely of their inheritances, as well as freedom of testamentation, expressed by the formula “given for the soul” (ЗА ДОУШОУ ОДАТИ),³⁵ and corresponded to

29 Edition Novaković, pp. 217 and 36.

30 Edited by Marković, p. 53.

31 Novaković, *Zakonski spomenici*, p. 334.

32 Edition Ralles and Potles, pp. 206, 324, 349, 484; edition Novaković, pp. 217, 342, 369, 512.

33 The exception being several wills of villagers from vicinity of Dubrovnik, as well as the will of Bosnian Herceg (Duke) Stepan Kosača, but, strictly speaking, these are not sources of Serbian mediaeval law.

34 Solovjev, *Zakonodavstvo Stefana Dušana*, p. 139 (= 447).

35 Burr, “The Code of Stephan Dušan”, p. 206; Novaković, *Zakonik*, p. 36; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

the capacity to make a will. In the charter issued on 28 May 1350, by which Tsar Dušan conferred property on the lesser lord Ivanko Probištitović, it was said that Ivanko could submit his property freely to the Church or give it for the soul (за дѡшѡ подѡ црѣквѣ записати).³⁶ Almost the same formula can be seen in the charter of Tsar Uroš issued on 10 April 1357 granting Mljet Island (in present-day Croatia) to two noblemen from Kotor, Bivoličić and Bučić:

In the same way that I, the Tsar, have confirmed hereditary estates to other lords and lesser lords, thus I confirm this to Baset Barinčelo and to Tripo Miho Bučić and their children, to be confirmed forever, whether they want to submit it to the Church as for the soul, or give it as a dowry, or sell it, or give it as a present, or swap it, and they may act fully of their own discretion as with their own hereditary estate.

Како кєть царѣство ми иним властеломѡ и властеличикемѡ записало и ѡтвердило ващине, тако и Басетѡ Баринчелѡ и Трипетѡ Михѡ Бѡкику и нихѡ дѡцамѡ записахѡ и ѡтвердихѡ јакѡ да имѡ кєть тврѣдо до вѣка любе подѡ црѣковѡ за дѡшѡ подѡписати ѡ прикину дати, продати, харизати, замѣнити, кѡдѡ имѡ хотѣние, вѣратити, како и всакѡ свою сѡцѡ ѡ ващинѡ).³⁷

The only surviving document where the freedom to dispose by a will was explicitly mentioned is the charter of Despot Đurađ Branković issued in 1428–1429 in favour of the headman Radič, stating: “Let the headman Radič have possession of these [villages] during his lifetime and if he wants to leave them to anyone after his death by writing this in his will, either to his child or to someone of his relatives, or he may give it to the Church” (да си ихѡ имаа чѣлникѡ Радич оу свомѡ животѡу, и по своои сѡмрѣти комоу што оусѡхѡкѡ оставити, записавши моу оу свои дѡтатаѡ, или своемуѡ дѡтѣтоу, или комоу ѡтѡ своихѡ сѡродникѡ, или црѣкви приложити).³⁸ In the second charter of Despot Đurađ Branković, presented in 1429–1430 to the headman Radič, the right to freely make a will is also established, although the word “will” (дѡтатаѡ) is not itself mentioned: “and after his death he may leave it either to a relative of his or to someone else without my lordship’s contest” (а по своои сѡмрѣти на кога остави, или на сѡродника или инога кога, да моу господѣство ми не потѡрѡи).³⁹ The right to make a

36 Edited by V. Aleksić, *SSA* 8 (2009), p. 73.

37 Edited by R. Mihaljčić, *SSA* 3 (2004), p. 74.

38 Novaković, *Zakonski spomenici*, p. 334.

39 *Ibid.*, p. 336.

will, expressed by the formula “to leave to one of the relatives” (или комуоу одъ своихъ оставити), was given by the charter of the Bosnian King Stefan Tomaš to the great logothetes Stefan Ratković, presented on 14 October 1458.⁴⁰

We have information, albeit sparse, that commoners (*sebri*) also had the capacity to make wills and that they disposed of their property freely. In all those cases, the property was bequeathed to the Church and monasteries, and the legal operation was expressed by the formulas “given for the soul” (за душѣ дати) and “given for the grave” (дати за гробъ свои). Saint George’s charter (1300) mentioned a certain Kalomen who “gave the field for his grave to the church of Saint Elias” (И даде Каломень за гробъ свои црьквь Светаго Илїю съ нивѣмъ).⁴¹ In the contract, in which Dobroslava with her children sold her manor in Prizren to Mano (the so-called “*Tapiya* from Prizren”), among other things was written that Mano (the buyer) can give a manor for the soul.⁴² We can find some more information in the inventory of the estates of the monastery of the Holy Virgin in Tetovo (c.1346), e.g.: “The field under Rečice between the roads was given by Roman for his grave and for his soul. And the other field, under that one, was given by Oubislav for his grave” (Нива подъ Рѣчицами Междоупутїе, цю даде Романъ за гробъ свои и за доушоу свою. И друуга нива ниже тегере ниве, цю даде Оубиславъ за гробъ). Similarly, the priest Dobrota and brothers Nikolitza and Hranislav bequeathed their fields “for the grave and mass” (за гробъ и за помень). Some of the villagers, having no descendants, bequeathed their land to the Church: “Nanaya gave part of his land for his soul, as he had no descendants ... I, Savdik, having realized that I have no descendants ... am giving the field under Holy Sunday ... in order to be mentioned by the church” (даде Нанаѣа комать за доушоу ѣре немѣше порода ... азъ савдикъ видѣвъ ѣре не имамъ порода ... нь давамъ нивоу надъ Светомъ Неделомъ втъ поутї подлоужка ... да ме поменуѣ црьква). But the document also mentioned one dispute that had arisen from the fact that a certain Strez bequeathed his land to the Church although he did have a male descendant. Strez’s son Dragia and son-in-law Dragoslav brought about an action challenging the will (цю ѣсть нїхъ втъць Стрѣзо ... приложилъ за доушоу си) and claimed restitution of the bequeathed property, but “when they appeared in front of judge Dabiživ, they were reconciled with one-another and said: ‘What our father sold and gave to the Church we do not contest but confirm’” (и стоупише прѣдъ соудїю Дабїжива, и оумїрише и рекосше: “цю ѣсть нашъ втъць продалъ и приложилъ црьквы,

40 Ibid., pp. 344–345.

41 Mošin, Ćirković, and Sindik, *Zbornik*, p. 321.

42 See Chapter 13, section 2, on contracts.

МИ НЕ ПОТВРАМО, НЬ ПАЧЕ ПООУТВРЪЖДАМО”).⁴³ It is obvious that the will of Strez was made in accordance with the governing legal rules of that time and that, therefore, his son and son-in-law did not have any legal ground to challenge it, proved by the expression that they were reconciled with one-another (оумирише) when appearing in court.

There is also some sparse information on the capacity to make a will at the end of article 31 of so-called “*Justinian’s Law*”, where we read: “If a husband remains without a child, and his wife dies, than the husband shall not take her property, just [the property] that was given by her own will” (Аще ли мужъ встанеть бес чедѣ, а жена умрѣтъ, да не възметь ница развѣ цю мѣ оставить жена своимъ хотѣниемъ).⁴⁴

A slightly greater influence of Roman law can be observed in the wills of villagers from the vicinity of Dubrovnik. The free disposition over a property is completely in the sense of Graeco-Roman (Byzantine) law, and there is even a case of the disinheritance of a male descendant in favour of a female one. The will of Vlahno Radišević from Ston, made on 8 January 1486, states that Vlahno wished to leave everything “rather to my daughter Nikoleta, from small to large, than to my son Dragoye ... who is separated from me by all means, both by love and by land” (све охоту ћери Николети од мала до велика, неголи охоту сину мому Драгою ... оддилио се ње од мене свимъ, како лубавю, тако и иманиемъ).⁴⁵

We can further ascertain the acceptance of Graeco-Roman law from the will of Medoye Nikulin, dated 23 February 1392, the beginning of which is as follows: “Medoye the son of Nicholas from the county of Žrnovnica, from Zavrilje, being strongly disabled, but still of good mental health, is going to make his will” (Медое сынъ Николинь из жоупе Жръновничке изъ Заврилѣ, боудуци оу велики немощи а оу добри памети, оучини свои тѣстаменьтъ).⁴⁶ In this case, we have the old principle of Roman Law that mental, not bodily health was required as a prerequisite for making a will. This principle was formulated by

43 Slaveva, Miljkovic-Peppek, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 297.

44 Edited by Marković, p. 61. Cf. B. Marković, “Nasledno pravo u Dušanovom zakoniku i u Zakonu cara Justinijana” [“Hereditary Right in Dušan’s Code and in the Law of Emperor Justinian”], in *Zakonik cara Stefana Dušana, Zbornik radova sa naučnog skupa održanog 3. oktobra 2000, povodom 650 godina od proglašenja* [Code of Tsar Stefan Dušan, Proceedings of the Conference Held on 3 October 2000, on the Occasion of 650 Years from the Promulgation], ed. Sima Ćirković and Kosta Čavoški, Srpska Akademija Nauka i Umetnosti, naučni skupovi, knjiga CVIII, odeljenje društvenih nauka, knjiga 24 (Belgrade 2005), pp. 67–79.

45 Solovjev, *Odabrani spomenici*, pp. 225–226.

46 Ibid., p. 177.

the Roman lawyer Labeon as follows: *In eo qui testatur eius temporis, quo testamentum facit, integritas mentis, non corporalis sanitas exigenda est.*⁴⁷ This rule was also incorporated into the *Procheiron* and the *Basilika*, its text in Greek being: Ὁ διατιθέμενος ὀφείλει τὸν νοῦν, οὐ μὴν τὸ σῶμα ἐρρῶσθαι.⁴⁸

The same document mentions the institute of Byzantine law called ἐπίτροπος (executor), a person appointed by a testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his death.⁴⁹ At the end of the testament, Medoye Nikulin says: “And the executors are Bogavatz, *comes* [of the county] Žrnovički and Milan Gurinovišt from the city” (А томоу соу притропи Богаватц кнезь Жръновъничьки и Миланъ Гуриновиць изъ града).⁵⁰ Four chapters of the Statute of Kotor also mention executors of a will (ἐπίτροποι): Cap. CLXXXVII, “On enactment of executors” (*De constitutione Epitroporum*); Cap. CLXXXVIII, “On authorisation of executors” (*De potestate Epitroporum*); Cap. CLXXXIX, “On Executors of those who leave heirs under age” (*De epitropis illorum qui relinquunt heredes infra etatem legitimam*); and Cap. CXC, “On sales done by executors” (*De venditione epitroporum*).⁵¹

Strictly, all of these testaments cannot be considered Serbian mediaeval legal documents, therefore conclusions on the application of the rules of Roman-Byzantine law in mediaeval Serbia cannot be made with certainty.⁵²

3.3 Gift in Contemplation of Death

A gift in contemplation of death (*donatio mortis causa*, δωρεὰ ἐν αἰτίᾳ θανάτου, по сьмьрти даръ) is a gift under the apprehension of death, as when anything is given upon condition that if the donor dies, the donee shall possess it absolutely, or return it if the donor should survive or should repent of having made the gift, or if the donee should die before the donor. A gift in view of death is one which is made in contemplation, fear, or peril of death, and with the intent that it shall take effect only in case of the death of the giver.⁵³

47 D. XXVIII, 1, 2.

48 *Procheiron* XXI, 2; *Basilika* XXXV, 1, 2. The Serbian translation of the text (ed. Dučić. p. 323; ed. Petrović, 294 b) is: ЗАВѢЩАВАЮИ ЗАВѢТЬ ДАЛЖЕНЪ БЫТЬ ОУМЪ ЗДРАВЪ ИМѢТЬ И НЕ ТѢЛО.

49 On executors in Byzantine Law, especially in the Holy Mountain's documents, see T. Matović, “Epitrop (ἐπίτροπος)—izvršilac testamenta” [“Epitrop (ἐπίτροπος)—Executor of a Will”], *ZRVI* 51 (2014), pp. 187–214.

50 Solovjev, *Odabrani spomenici*, p. 178.

51 Edition Kotor 2009, pp. 111–114.

52 See S. Šarkić, “The Concept of the Will in Roman, Byzantine and Serbian Mediaeval Law”, in *FBR, Fontes minores XI*, ed. Ludwig Burgmann (Frankfurt am Main 2005), pp. 426–433.

53 Cf. D. XXXIX, 6, 2; XXXIX, 6, 35, 4.

Two forms of a gift in contemplation of death, known from Roman law, can be found in Byzantine legal miscellanies as well. However, the Greek terminology is slightly different—indicated by the text of the *Procheiron*. Μετὰ θάνατον δωρεά were the gifts given after the death of a donor.⁵⁴ The ownership right of a donee would be acquired in the moment of the donor's death. In the next article, the *Procheiron* mentions ἐν αἰτίᾳ θανάτου δωρεῶν—gifts in contemplation, fear or peril of death,⁵⁵ what is identical with the second form of *donatio mortis causa* of Roman law. The Serbian translation of the *Procheiron* (*Zakon gradski*) follows the Greek original using the terms по сьмрьтш даръ and въ винѣ сьмрьтѣи дати даръ.⁵⁶ In Chapter Δ (Δ) - 13, dedicated to gifts,⁵⁷ Matheas Blastares does not mention gifts in contemplation of death.⁵⁸

In legal documents written in Old Serbian, we can find some examples which could be considered as gifts in contemplation of death, although the sources do not use this term. In the chrysobull presented to the monastery of Saint Archangels Michael and Gabriel (1348), Tsar Dušan says that his lesser lord Nicholas Utoličić gave as a present his hereditary estate, the village of Ljubočevo, to the monastery (И ꙗце приложи любовниѣ влаетеличнѣи царьства ми Никола Оутоличикъ село свое вацинѣно Любочево). “Nicholas and his mother shall hold the village of Ljubočevo as long as they live, and after their death the donee (monastery of Saint Archangels) shall acquire the ownership rights over that gift” (а по Николиниѣ животѣ и ѿегове матери да не владѣе никто оуѣмъзи селомъ ни црьковию тъкмо црьквѣ царьства ми Архаггелъ).⁵⁹ On 7 April 1453, at a market-place in Kosovo, a certain Novak and his spouse Yela gave half of their house to the monastery of Saint Paul, but the monastery would acquire the ownership rights over the house after the donor's death (Іа Новакъ с моѣмъ подърѣжнѣмъ ꙗеломъ, нашьмъ волымъ и нашьмъ хотѣнѣмъ, изьволисмо и приложисмо на нашьмъ животѣ Светомѣ Павлѣ половина кѣке ... да вбладамъ іа Новакъ до мога живота свѣмъ кѣкѣмъ, а по моѣ сьмрьти да е Светомѣ Павлѣ половина кѣке ...).⁶⁰

54 *Procheiron* XII, 3, Zepos, vol. II, p. 150.

55 *Procheiron* XII, 4, Zepos, vol. II, pp. 150–151. Cf. *Ecloga* IV, 3, 1: διὰ προσδοκίαν θανάτου δωρεά, and IV, 3, 2: δωρούμενος διατάσσεται, ed. Burgmann, p. 186.

56 Ed. Dučić, p. 297; ed. Petrović, pp. 314a–314b.

57 See Chapter 13, section 2, on contracts.

58 See T. Matović, “ΜΕΤΑ ΘΑΝΑΤΟΝ ΔΩΡΟΝ u svetogorskim aktima” [“ΜΕΤΑ ΘΑΝΑΤΟΝ ΔΩΡΟΝ in Holy Mountain Acts”], in ΠΕΡΙΒΟΛΟΣ, *Mélanges offerts à Mirjana Živojinović*, vol. II (Belgrade 2015), pp. 427–442.

59 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 98.

60 Bubalo, *Srpski nomici*, p. 261. See S. Šarkić, “Serbian Mediaeval Law on Wills and Succession”, *Pravni zapisi* 11.1 (2020), pp. 121–140.

Family Law

Family law is a branch of law concerned with such subjects as marriage, adoption, divorce, separation, paternity, custody, support and child care.

Although the Serbs were converted to Christianity between 867 and 874, family relations were based on customary law. It seems that until the beginning of the 13th century, entering into marriage was very simple and the majority of population lived in so-called “wild marriages”—irregular unions in which promises were exchanged between the parties without an official ecclesiastical representative present. Such unions were customary among serfs, villagers, slaves and Vlachs, who simply paired by order of their lord or master. No particular form was needed for a declaration of divorce (*repudium*). Saint Sabba and his brother Stefan the First Crowned tried very hard to introduce ecclesiastical rules in the matter of family law. However, a gap between old ideas, inherited from the pagan epoch, and complicated canon law provisions of the Greek Orthodox Church, exposed in translations of Byzantine legal miscellanies (the *Procheiron* and *Syntagma* of Matheas Blastares), was very wide.¹ What was in practical use?

1 Marriage (γάμος, *nuptiae*, *matrimonium*, БРАКЪ)

1.1 *The Concept of Marriage*

A definition of marriage was given by the famous Roman lawyer Modestinus in the first book of his *Regulae* (*libro primo regularum*), and *Digest* editors placed it at the beginning of Chapter II of Book XXIII under the title *De ritu nuptiarum*. The definition is as follows: *Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio* (“Marriage is a conjunction of a man and woman, a lifelong union, an institution of divine and human law”).² In Justinian’s *Institutions* there is a similar definition: *Nutpiae autem*

¹ See S. Bojanin, “Bračne odredbe Žičke povelje između crkvenog i narodnog koncepta braka” [“The Marriage Provisions in the Charter of the Žiča Monastery between the Church and the Popular Concept of Marriage”], in *Vizantijski svet na Balkanu* [Byzantine World in the Balkans], Institute for Byzantine Studies, Serbian Academy of Sciences and Arts, Studies, no. 42.2 (Belgrade 2012), vol. II, pp. 425–442.

² D. XXIII, 2, 1.

sive matrimonium est viri et mulieris coniunctio, individuum consuetudinem vitae continens ("Marriage is a conjunction of a husband and wife, created to last for life").³ The definition of Ulpianus found in Book L of the *Digest*, Chapter VII entitled *De diversis regulis iuris antiqui*, also demonstrates the Roman idea of marriage: *Nuptias non concubitus, sed consensus facit*, i.e. "the essence of marriage is not sexual relation but consent [to live in matrimony]".⁴

The *Procheiron* accepted Modestinus' definition and translated it into Greek: Γάμος ἐστὶν ἀνδρὸς καὶ γυναικὸς συνάφεια καὶ συγκλήρωσις πάσης ζωῆς, θείου καὶ ἀνθρωπίνου δικαίου κοινωνία.⁵ As we can see, the text is literally translated and fully corresponds to the Roman concept, that marriage is a social fact, not a civil law relation. It is interesting that neither the *Procheiron* nor *Ecloga*, which preceded it, insist on the formal proceedings of a wedding as an exclusive requirement for marriage, which could be considered as usual in Orthodox Byzantium.⁶ But later on, laws that were passed during the rule of the Macedonian dynasty introduced innovations and inserted what was "omitted" by the editors of the *Procheiron*. The editors of the *Epanagoge*/*Eisagoge* amended Modestinus' definition of marriage by omitting the wording θείου καὶ ἀνθρωπίνου δικαίου κοινωνία ("institute of divine and human law"), and by inserting the words εἴτε δι' εὐλογίας εἴτε διὰ στεφανώματος ἢ διὰ συμβολαίου, meaning that the marriage is to be effected either by a wedding ceremony or a blessing or a literal contract.⁷ So, wedding ceremony, blessing and secular contract were considered equal. Leo VI proceeded one step further, and his *Novella* 89 (issued 893) prescribed Church benediction (εὐλογία) as an obligatory form of entering into such a contract.⁸

It seems that, notwithstanding this provision, numerous weddings were not performed following religious rites. Due to that fact Emperor Alexios I Comnenos issued in 1095 a *Novel* 35, which prescribed Church marriage as mandatory even for slaves.⁹ Finally, in 1306 Emperor Andronicos II Palaiologos and Patriarch Athanasios issued a *Novel* 26, which required that weddings should be performed in the presence of an authorised clergyman.¹⁰

3 *Iust. Inst.* 1, 1. In the text we find *nuptiae autem sive matrimonium*. Editors used two terms for marriage (*nuptiae* or *matrimonium*).

4 D. L, 17, 30.

5 *Procheiron* IV, 1, Zepos, vol. II, p. 124.

6 See *Ecloga* II, 1, ed. Burgmann, p. 170.

7 *Epanagoge* XVI, 1, Zepos, vol. II, p. 274.

8 Ed. Noaille and Dain, pp. 295–297.

9 Zepos, vol. I, pp. 341–346. According to Roman law marriages between slaves (*contubernium*) possessed no legal validity.

10 Zepos, vol. I, pp. 533–536.

The editors of Serbian legal miscellanies accepted Byzantine translations of Roman definitions of marriage. The *Nomokanon* of Saint Sabba incorporated Modestinus' definition of marriage, which had been taken from the *Procheiron* (like the other provisions about marriage). Here is the Serbian original: Бракъ есть мѹжевы и женѣ съѹтаніе, и събытіе въ вѣсѣи жиѹны, божѣственеже и ѹловѣтѣрскыи правды обыченіе.¹¹ Matheas Blastares, like the translators of his *Syntagma* into Serbian, took the modified Modestinus' definition of marriage from the *Epanagoge/Eisagoge*, which is (Г-3): Γάμος ἐστὶν ἀνδρὸς καὶ γυναικὸς συνάφεια καὶ συγκλήρωσις πάσης ζωῆς, θείου τε καὶ ἀνθρωπίνου δικαίου κοινωνία, εἴτε δι' εὐλογίας, εἴτε διὰ στεφανώματος, ἢ διὰ συμβολαίου; Бракъ есть мѹжа и жены съвѣкоупленіе и сьнаслѣдїе въ вѣси жизни, божѣствныи же и ѹловѣтѣрскыи правды приобцненіе, любо благословеніемъ, любо вѣнчаніемъ, любо съ записаніемъ.¹² The definition from the 9th century, which equalized a laic contract with blessing and marriage, was considered obsolete by the 14th century. Neither Matheas Blastares nor his Serbian translators incorporated into the *Syntagma* Novels of Byzantine Emperors that required religious rites for marriage. The editors of the Law Code of Stefan Dušan corrected Blastares' "mistake", by putting articles 2 and 3 of the Code fully in conformity with the *Novellae* of Byzantine Emperors and with religious practice. We are going to quote them in full:

Article 2, "Of marriage" (Љ жениѣтѣ):

Lords and other people may not marry without the blessing of their own archpriest or of such cleric¹³ as the archpriest shall appoint.

Властѣле и прочїи людїи, да се не женѣ, не благословивъше се оу своего ар'хієреа, али оу тех'зїи да се благослове, кои сѣ избрали доуховники ар'хієрен.

Article 3, "Of weddings" (Љ свадѣтѣ):

No wedding may take place without the crowning, and if it be done without the blessing and permission of the Church, then let it be dissolved.

¹¹ Ed. Dučić, p. 258; ed. Petrović, p. 270b.

¹² Ed. Ralles and Potles, pp. 153–154; ed. Novaković, p. 160. Although Matheas Blastares took the definition of Modestinus from *Epanagoge/Eisagoge*, he did not omit the words "institute of divine and human laws", which was done by the editors of the *Epanagoge/Eisagoge*.

¹³ *Duhovnik*, lit. "spiritual person".

И НИ ЄДИНА СВАД'БА ДА СЕ НЕ ОУЧИНЫ БЕЗ В'БН'ЧАНІА; АКО ЛИ СЕ ОУЧИНЫ БЕЗЪ БЛАГОСЛОВЕНІА, И ОУПРОШЕНІА ЦРКВЕ, ТАКОВЫ ДА СЕ РАЗЛОУЧЕ).¹⁴

Article 3 clearly marks a difference between *svadba* = wedding and *venčanje* = crowning. *Svadba* is entering into a marriage according to the old customs from the pagan epoch with beautiful and well-formed ritual, surviving to the present day especially with Russians and South Slavs. *Venčanje* is a religious rite (*consecratio*) with a central ceremony consisting of putting crowns on the heads of the bride and groom (Greek στεφάνωμα, from στέφανος = crown, Serbian *venac*, *венац*).

By those articles of Dušan's Law Code, the old Roman concept of marriage as of a laic contract finally disappeared, and the Christian concept of marriage as a holy sacrament or mystery (μυστήριον) prevailed and was fully accepted.¹⁵

1.2 *Lack of Disqualifications*

In Old Serbian, entering into marriage was designated by two terms: to take a wife is *da se ženi* and to take a husband is *da se muži* (Dušan's Law Code, article 154: ДА СЕ МОУЖИ И ЖЕНІИ; King Stefan Dečanski's charter confirming the gift of *kaznac* [tax collector] Demetrios to the monastery of Saint Nicholas on the island of Vranjina: И АКО СЕ ЈЕГОВА ЖЕНА ОМОУЖИИ ...; АКО ЛИ СЕ НЕ ОМОУЖИИ).¹⁶ The first expression survived into modern Serbian, while the second is no longer in use.¹⁷

Husband and wife had to have reached the age of puberty - 14 in the case of the male, 12 in the case of female. The *Ecloga* set a limit of 15 years in the case of a male, and 13 in the case of females.¹⁸

Chapter B-8 of Matheas Blastares' *Syntagma*, under the title "On matrimonial degrees" (Περὶ τῶν τοῦ γάμου βαθμῶν, Ο στέπενεχъ брака) speaks minutely

14 Burr, "The Code of Stephan Dušan", pp. 198–199; Novaković, *Zakonik*, pp. 7–8; *Zakonik cara Stefana Dušana*, vol. III, p. 98.

15 See S. Šarkić, "The Concept of Marriage in Roman, Byzantine and Serbian Mediaeval Law", *ZRVI* 41 (2004), pp. 99–103.

16 Novaković, *Zakonik*, pp. 120–121; *Zakonik cara Stefana Dušana*, vol. III, p. 144; Novaković, *Zakonski spomenici*, p. 581, paras III, IV.

17 In Serbian, as in Russian, different words are used for marrying according to the sex of the person. The Serbian word for a man to marry is *oženiti se*, a reflexive verb from the word *žena* = woman. The word for a woman, in the modern language, is *udati se*, literally to give oneself up, but in the Macedonian language the old verb is still used, *mužiti se*, from the word *muž* = a husband. Cf. Burr, "The Code of Stephan Dušan", p. 529.

18 *Ecloga* II, 1, ed. Burgmann, p. 170.

of all the prohibited degrees of relationship.¹⁹ The essential provisions are as follows.

- a) Blood relationship (Περὶ τῆς ἐξ αἵματος συγγενείας, Ο ἰκεὶς ἀπὸ τοῦ αἵματος)—marriage between parties sharing a blood relationship was invalid. At no time might those with a lineal relationship marry. The law concerning collaterals prohibited marriage to those up to the eighth degree (Τοῖς δὲ ἐκ πλαγίου ὁ ὀγδοὺς ἐφίησι τὸν γάμον βαθμὸς τοῦ ζ'. τοῦτον παντάπασιν εἰργοντος, Оτѣ стране же соуштіимъ осмы праштаєтъ бракъ степенъ: се д' момоу се отиоу дѣ възбраняиштоу).²⁰
- b) Relationship by marriage or affinity (Περὶ τῶν ἐξ ἀγχιστείας, Ο ἰκεὶς ἀπὸ τοῦ ἐκείνου)—step-parents and step-children, parents-in-law and children-in-law were disqualified from marriage. This law was later extended to include the former spouse of a brother or sister.²¹

Among relationships by marriage Serbian charters mention only one impediment: marriage with a sister-in-law.²² Such a provision is contained in the Žiča charter: “If someone took sister-in-law against law,²³ if he be a noble or a soldier, let him give to his master a fine of two oxen; if he be from poor people, bishop will take a half, then let it be dissolved” (Аще кто сватвицѣ прѣз законъ ѡзѣме, аще бѣдетъ ѡтѣ владетель или ѡтѣ воиникъ, да ѡзѣмаєтъ ѡслѣхѣ госпо-дѣствеѣни по .В. воли; аще ли ѡтѣ ѡбогикъ, то да ѡзѣма светитель половинѣ, а такови да се расцѣпають ѡ расцѣстѣхѣ или ѡ сватвицѣхѣ).²⁴ It seems that marriage with a *svastika* (sister-in-law) was allowed by Serbian customary law and that it was widespread. That was the reason why a legislator insisted on that impediment.²⁵

- c) Spiritual relationship (*cognatio spiritualis*, πνευματικὴ συγγένεια, доуховное сродство)—already Justinian prohibited the marriage of god-parents and god-children.²⁶
- d) Existing marriage—an existing lawful marriage prevented either partner entering another marriage relationship. Bigamy was punished.

19 Ed. Ralles and Potles, pp. 125–141; ed. Novaković, pp. 130–146.

20 Ed. Ralles and Potles, p. 128; ed. Novaković, p. 132.

21 Ed. Ralles and Potles, pp. 129–130; ed. Novaković, pp. 134–135.

22 The Serbian word is *svastika* = wife's sister.

23 The word *zakon* = law, used in the text designates custom (*consuetudo*), not legal rule (*lex*).

24 Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

25 We have already mentioned that the Saint Stephen and Dečani charters forbid marriages between villagers and Vlachs (see Chapter 5, section 2.2). However, this kind of impediment has more social and economic explanations.

26 Ed. Ralles and Potles, pp. 138–139; ed. Novaković, pp. 143–144.

- e) Guardians and wards (Περὶ ἐπιτρόπου καὶ ἀφελίκων, О пристав'ницѣ)—guardians (*tutor*, ἐπίτροπος, пристав'никъ) were not allowed to marry their wards (*pupillus*, ὀρφανός, сиротѣ). Tutelage came to an end when the *pupillus* reached the age of 30 and then a guardian could marry his female ward. However, the mother of the female ward (ἐπιτροπευθείσης, пристав'леніємъ) could give her daughter in marriage even before that term.²⁷
- f) Widows—where a widow married within 12 months of the death of her husband, the marriage was not invalidated, but it brought *infamia* (ἀτιμοῦται, обесч'ст'бляетъ ее) upon her. She could inherit nothing from the matrimonial property of her ex-husband, and she could give only the third part of her estate to her second husband, in the case that she had no child. If a widow was delivered of a child within 11 months of the death of her husband, it would be considered as a debauchery (πορνεία ἐστὶ τὸ γεγονός, блоч'дъ есть быв'шїе), and she would get nothing from inheritance.²⁸
- g) Marriages with Heretics—these were strictly forbidden, and Matheas Blastares speaks on this topic in Chapter Γ-12 under the title “On why not to enter into marriage with heretics” (“Οτι οὐ δεῖ γάμους συναλλάττειν μετὰ αἰρετικῶν, ꙗко не подобаетъ брака замѣновати съ еретици”).²⁹ The notion of heretics was broad, and under that term were considered Jews, Hellenes (Greeks, i.e. pagans, heathens) and Latins (Roman-Catholics) as well: “We call heretics those persons, who accept the secret [of Baptism] with some mistakes, by which they differ from Orthodox people; Jews are Christ’s murderers, and Hellenes are obviously infidels and infected by idol-worshipping” (αἰρετικούς μὲν τοὺς τὸ κατ’ ἡμᾶς δεχομένους μυστήριον λέγων, ἐν τισι δὲ σφαλλομένους, παρὸ καὶ διαφερομένους τοῖς ὀρθοδόξοις· Ἰουδαίους δὲ, τοὺς Χριστοκτόνους, καὶ Ἕλληνας, τοὺς περιφανῶς ἀπίστους καὶ εἰδωλομανίαν νοσοῦντας, еретикы оубо иже въ насъ приемилюштихъ таинство глаголю, въ нѣкихъ же погрѣшаюштихъ по ѿмоуже и раз’нѣствоујотъ съ православными; юудеи же Христоу оубѣице и ѿл’лине іавѣ невѣрныи и идолоб’снїемъ недоуѓоуштихъ). “If a heretic or infidel promises that he shall become an Orthodox, marriage shall be postponed until the transformation begins ... Latins have to do the same thing if they wish to marry an Orthodox woman” (Εἰ δ’ ἴσως ὁ αἰρετικός, ἢ ὁ ἀπίστος συνθέσθαι τῇ ὀρθοδόξῳ ἐπαγγέλλεται πίστει, τὸ μὲν συνάλλαγμα προβαίνειτω ... Ταῦτα καὶ τῶν

27 Ed. Ralles and Potles, pp. 139–140; ed. Novaković, pp. 144–146. Cf. Chapter 1, section 1.

28 Ed. Ralles and Potles, p. 141; ed. Novaković, p. 146. Cf. *Basilika* xxviii, 14, 1.

29 Ed. Ralles and Potles, pp. 173–175; ed. Novaković, pp. 181–183.

Λατίνων ποιεῖν εἰσπράττονται, οἱ ὀρθοδόξους ἀγαγέσθαι γυναῖκας αἰρούμενοι; Аште ли же оубо еретиць или невѣрны съприложити се православ'нѣи ове-штаватиъ се вѣрѣ, еже оубо замѣненіе да творить се ... Сѣа и соушти отъ латинь творити истезаемии соутъ, иже православ'ныне поети жены воле-ште).³⁰

Article 9 of Dušan's Law Code says: "And if anywhere a half-believer³¹ take a Christian³² woman to wife, let him be baptized into Christianity, and if he will not be baptized, let his wife and children be taken from him and let a part of the house be allotted to them, but he shall be driven forth" (И ако се наиде полѣвѣр'ць, оузымь христїаницѣ, ако љзлюби да се крѣсти оу христїан'ство. ако ли се не крѣсти, да мѣ се оузмѣ жена и дѣца и да имь даа дѣль ѡт коу'кѣ, а ѡнь да се ижде).³³

The intention of article 9 was to prevent marriages between Greek Orthodox and Roman Catholics, due to the very complicated political relations in the Balkans in the first part of the 14th century. We shall analyse in detail this article in Part 5, dedicated to criminal law.

2 Matrimonial Property

2.1 Gift

Roman law knew gift before marriage (*donatio ante nuptias*, προγαμιαία δωρεά, прѣждебрауѣ дарѣ) and gift on account of marriage (*donatio propter nuptias*, ὑπόβολον, подлогѣ). In Roman law *donatio ante nuptias* took the form of a settlement on the wife made by the husband and intended as his share of the expenses of the marriage. So that the prohibition of gifts between spouses might not take effect, the *donatio* was made before the marriage. On the husband's death, or in the case of divorce without fault on the wife's part, the *donatio* passed to her. If there were children, they received ownership of the *donatio* and a wife received a usufruct. Under Justinian a settlement might be made before or after the marriage (*donatio propter nuptias*). There was rarely a transfer of property; the husband merely contracted to make a gift.³⁴

³⁰ Ed. Ralles and Potles, p. 173; ed. Novaković, p. 181.

³¹ The "half-believer" is a "Latin", one who is not completely Christian nor yet pagan. See Đ. Bubalo, "Poluverci", in *LSSV*, p. 549.

³² The "Christian" in Dušan's Law Code always designates an Orthodox.

³³ Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 13; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

³⁴ See Curzon, *Roman Law*, p. 45.

Among Byzantine legal miscellanies, the *Procheiron* contains Chapter VI under the title “On gifts before the marriage” (Περὶ προγαμιαίας δωρεάς, О прѣж-дебраженѣ дарѣ),³⁵ which repeats the provisions from Justinian’s legislation. Emperor Leo VI in his *Novella* 20 (between 886 and 910) prescribed that neither husband nor wife could acquire nothing else but *hypobolon* (*donatio propter nuptias*) in the case of death of one or another (Περὶ τοῦ μὴ λαμβάνειν τὸν ἄνδρα ὥσπερ τὴν γυναῖκα εἰς τὰ παρὰ τοῦ ὑποβόλου ἐκ προτελευτῆς θατέρου μέρους).³⁶

Matheas Blastares introduced in his *Syntagma* just a short fragment from Emperor Leo VI’s *Novella* 20, saying that dowry has to be of greater value than the gift on account of marriage (*hypobolon*). If the husband dies without child, a wife will acquire dowry and *hypobolon*. If the wife dies, their heirs will get dowry and the husband his *hypobolon* (Ἡ τοῦ σοφοῦ Λέοντος Νεαρά, πλείονα δεῖ εἶναι, φησὶ, τὴν προῖκα, τοῦ ὑποβόλου· τοῦ δὲ ἀνδρὸς ἀτέκνου τελευτήσαντος, ἂν μὴ παρῇ σύμφωνον, ἀνακομίζεται ἡ γυνὴ τὴν τε προῖκα καὶ τὸ ὑπόβολον, καὶ πλέον οὐδέν· εἰ δὲ τὴν γυναῖκα ὁ θάνατος διασπάσει, τῆς μὲν οἱ κληρονόμοι τὴν προῖκα λαμβανέτωσαν· ὁ δὲ ἀνὴρ, τοῦ ἰδίου μὴ ἀποστρεφίσθω ὑποβόλου, Прѣмугдраго Льва Новага множае подобаетъ быти рече прикѣи отъ подлога: мугжеви же бесчедноу оумьрѣшюу, аште не бугдетъ сыгласѣа, въсприемаетъ жена прикѣи и подлогъ и множае ничтоже; аште ли жепоу смьрътъ оттрѣгнетъ, оноу оубо наслѣдници прикѣи да приемяють. мугъ же своего подлога да не лишитъ се).³⁷

Serbian legal sources do not contain rules on gifts before marriage and gifts on account of marriage.

2.2 Dowry (*dos*, προῖκα, проѣз, вѣно, прикѣа, прикѣа, тѣстнина)

Although Roman lawyers in their books did not give a single definition of dowry, they considered dowry (*dos*) as the property which on marriage, by a special agreement (*pactum*), is transferred by the wife herself or by another to the husband with a view of diminishing the burden which the marriage will entail upon him. It was of three kinds. *Profecticia dos* is that which is derived from the property of the wife’s *paterfamilias*, her father or paternal grandfather. *Adventicia* is termed that *dos* which is not *profecticia* in respect to its source, whether it is given by the wife from her own estate or by the wife’s mother or a third person. It is termed *recepticia dos* when accompanied by a stipulation for its reclamation by the constitutor on the termination of the marriage.³⁸

35 Zepos, vol. II, p. 129; ed. Dučić, p. 266; ed. Petrović, p. 273a.

36 Ed. Noaille and Dain, pp. 77–83.

37 Ed. Ralles and Potles, p. 483; ed. Novaković, p. 511.

38 *Ulpiani regularum liber singularis*, VI, 3–5, ed. A. Romac (Zagreb 1987) (Latina et Graeca Liber XI), pp. 32–34: *Dos aut profecticia dicitur, id est quam pater mulieris dedit; aut adventi-*

The property over dowry was a very complicated question, and Roman lawyers discussed this legal institution at large. In a fragment from the *Digest* we can find opinion of the famous Roman *iurisconsultus* Paulus, who considers that *dos*, throughout the continuance of a marriage, is the property of the husband (*Idem* [Paulus] *respondit constante matrimonio dotem in bonis mariti esse*).³⁹ The frequency of divorces in Roman society, however, imposed the issue as to whether the dowry should be given back to a wife upon termination of the marriage. That was the reason why Roman lawyers gradually developed the idea that *dos* was still the property of a wife, as was expressed by Tryphoninus as follows: “Though the dowry is in husband’s estate, it still belongs to the wife” (*quamvis in bonis mariti dos sit, mulieris tamen est*).⁴⁰

In later Roman history, *dos* got a great importance in property-rights relations between consorts, so that Roman lawyers discussed it at large, creating a great number of rules, which can be summarized as follows. After the death of the husband, the dowry belongs to the wife. In case of a divorce, a husband has to give back the dowry to his wife, but he can retain some parts of a dowry, for example for the interest of his children (*propter liberos*). If the marriage has been dissolved due to the proved fault of the wife, the husband can retain one to (max.) six parts of the dowry (depending on the number of children they have), but not exceeding half the dowry. From moral laws (*propter mores*), for example if a wife commits adultery, a husband can retain a sixth of the dowry. If the wife dies before her husband, a *dos profectitia* has to be returned to the wife’s father, but the husband can keep one-fifth of the dowry for each child.⁴¹

The legislation of Justinian insists that the dowry (*dos*) is the wife’s property, and those provisions were taken over, first in the *Procheiron* and, after its translation into Old Serbian, in the *Nomokanon* of Saint Sabba. The editors of the *Procheiron* gathered the provisions on dowry in Chapter VIII entitled “On the law of dowry” (Περὶ δικαίου προικός) and in Chapter IX entitled “On demand of dowry and its burdens” (Περὶ ἐκδικήσεως προικὸς καὶ τῶν βαρῶν αὐτῆς).⁴²

cia, id est ea, quae a quovis alio data est ... Adventicia autem dos semper penes maritum rimanet, praeterquam si is, qui dedit, ut sibi redderetur, stipulatus fuit; quae dos specialiter recepticia dicitur.

39 D. L, 1, 21, 4.

40 D. XXIII, 3, 75.

41 The majority of rules concerning dowry were presented by the lawyers of Justinian in three titles of the *Digests*: Book XXIII: third title *De iure dotium* (“On the law of dowry”), which contains 85 fragments from the works of Roman lawyers; fourth title *De pactis dotalibus* (“On dotal pacts”), containing 32 fragments; and fifth title *De fundo dotali* (“On dotal land”), containing 18 fragments.

42 Ed. Zepos, vol. II, pp. 139–143.

The Old Serbian translation of Chapter VIII is “On effecting of the dowry” (О исправляеиыи вѣна) and of Chapter IX “On demand of dowry and its burdens” (О вѣтѣмѣиіи вѣна и тежести еѣо).⁴³

Matheas Blastares placed the rules on dowry in two chapters: Chapter Δ (Д) - 2 entitled “On lenders and loans and pledges” (Περὶ δανειστῶν, καὶ δανείου, καὶ ἐνεχῶρων, О заѣмницѣхъ и заимѣ и залозѣхъ) and Chapter Π-20 entitled “On dotal property” (Περὶ προικῶν πραγμάτων, О прикіѣиницхъ иманіицхъ).⁴⁴ He retained rules from the *Procheiron*, i.e. from the legislation of Justinian, and these are the following provisions: the husband can use the dowry, but he has no right to sell it. The wife is not allowed to give her dowry in a loan for the debts entered by her husband.⁴⁵ If a husband becomes insolvent, because of his debts, a wife has the right to reclaim the dowry, and she has even a priority regarding a state (“imperial”) demand (τοῦ δημοσίου χρέους, отъ народнаго дълга, рекше царскаго).⁴⁶ After a wife's death, the dowry belongs to the children. The husband could not inherit the dowry. If the wife dies having no children, the dowry has to be returned to her family.⁴⁷ Any agreement between consorts establishing the right of a husband to inherit the dowry is null and void. Such agreement, however, is allowed if it is entered into between the father of the bride and the bridegroom, because the father of the bride has the disposal right on the dowry.⁴⁸ A husband has the right to demand the promised dowry with interest in judicial trial, if the dowry has not been disbursed to him on time.⁴⁹

A short survey of Graeco-Roman law provisions on dowry shows that this private-law institution penetrated mediaeval Serbia by translation of Byzantine legal miscellanies. But to what extent and over what period were all those

43 Ed. Dučić, pp. 279–286; ed. Petrović, pp. 278b and 279a. It is interesting that the Serbian translators of the *Procheiron*, for the Greek word προίκα, προίξ = dowry, used the Old Slavonic term *veno* (вѣно), while in the legal sources from the 14th century we find the expression *prikiia*. See S. Šarkiċ, “Jedan pravnoistorijski prilog o Zakonopravilu Svetoga Save” [“A Contribution to the Study of the *Nomokanon* of Saint Sabba from the Perspective of Legal History”], in *Nasleđe i stvaranje, Sveti Ćirilo—Sveti Sava, 869–1219–2019 (Sanctorum Cyrilli et Sabbae patrimonium—posteriores quae eo structa sunt, DCCCLXIX–MCCXIX–MMXIX)* (Belgrade 2019), pp. 461–470. Both terms are obsolete today. In modern Serbian the word *miraz* is used for dowry, which originates from Arabic, coming into Serbia during the Turkish occupation (Arabic *mīrāt*, Turkish *miras*). See Škaljiċ, *Turcizmi u srpskohrvatskom-hrvatskosrpskom jeziku*, p. 464.

44 Ed. Ralles and Potles, pp. 204 and 440; ed. Novaković, pp. 214 and 466.

45 Ed. Ralles and Potles, p. 204; ed. Novaković, p. 214.

46 Ed. Ralles and Potles, p. 204; ed. Novaković, p. 214.

47 Ed. Ralles and Potles, p. 441; ed. Novaković, p. 466.

48 Ed. Ralles and Potles, p. 441; ed. Novaković, p. 466.

49 Ed. Ralles and Potles, p. 441; ed. Novaković, p. 466.

rules actually applied? Were they in accordance with Slavonic customary law on family? The answers are unknown due to an absence of any surviving legal decisions, the only material which could resolve these questions.⁵⁰

However, dowry was mentioned in several fragments of Serbian legal sources from the 14th century, what undoubtedly means that this private-law institution, under the influence of Byzantine law, was very well known in Serbian mediaeval law.⁵¹ For example, in Saint George's charter we read: "And Dragoslav *camerarius* gave [to the monastery] from the estate acquired from his father-in-law, the vineyard Mavrovo in Butela" (И Драгославъ казныцъ даде ѿ тѣхъ нине си виноградице Маврово ѿ Бутели).⁵² The editors of the charter emphasize that *camerarius* Dragoslav gave the vineyard to the monastery as a donation from the property that he acquired from his father-in-law (*tastnina*, from Serbian term *tast* = father-in-law), what was probably a dowry. The same charter mentions *tastna prikija* (тѣстна прикија), i.e. the dowry (*prikija*) obtained from the father-in-law (*tastna*); the dowry was acquired by a certain Manota, who was the son-in-law of a certain Dragota (Манота зеть Драготинь).⁵³

50 According to Karl Kadleč, a Czech scholar who studied primitive Slavonic customary law (*Prvobitno slovensko pravo pre x veka, translated and supplemented by Teodor Taranovski* [Belgrade 1924], p. 82), those rules were in discordance with the Old Slavonic custom, which provides that the bride gets no dowry, only some garments and trinkets.

51 The influence could come from the maritime towns on the Adriatic coast, which in the 14th century were part of the Serbian mediaeval State (Kotor, Budva, Bar, Ulcinj, today all of them in Montenegro), and from Ragusa (Dubrovnik) as well. For example, chapter 149 of the Statute of the City of Kotor from 1316, was entitled *De dote et parchivio* (*parchivium*, from Greek word *προιξ* = *prikija*, dowry), which expresses ideas from the legislation of Justinian, i.e. that dowry is the wife's property (*Statut grada Kotora*, vol. I, p. 89; see also Sindik, *Komunalno uređenje Kotora*, p. 130). The principle that the dowry is the wife's property was more explicitly expressed in the Statute of Dubrovnik from 1272: *Intentionis enim nostrae est, ut semper et in omni casu dos sive perchivium mulieris sit salvum* (Liber IV, Cap. I, *Statut grada Dubrovnika*, p. 240).

52 Mošin, Ćirković, and Sindik, *Zbornik*, p. 319.

53 Ibid., p. 324. Abovementioned examples show us that the general principle of Byzantine law, that even immovable things could be given as dowry (which was not explicitly mentioned in the *Syntagma* of Matheas Blastares), was accepted in the region of Skoplje (today in North Macedonia). Cf. Solovjev, *Zakonodavstvo Stefana Dušana*, p. 131. To confirm that fact Solovjev quotes a fragment from King Milutin's charter to the *pyrgos* of Hilandar, saying that the Serbian King has got the whole region of Skoplje as a dowry of Princess Simonis, from her father Byzantine Emperor Andronikos II Palaiologos (и по томъ быхъ зеть благовѣрномуу и самодръжавномуу царю кнрь Андроникѡу Палеологоу, и да ми оноузи землю оу прикию; Novaković, *Zakonski spomenici*, p. 477, para. 11). In my opinion this is not about the dowry as a private-law institution, but rather about diplomatic policy; in order to save their reputation, the Byzantines gave to the Serbian King, under the cover of dowry, territories which had already been conquered by Milutin.

Articles 31 and 32 of so-called “*Justinian’s Law*” mention dowry using the Greek word *prikija*. Article 31: “If someone takes a wife according to the law, with or without dowry, and a husband dies and a woman remains without a child, to her property shall be added the fourth part of the husband’s dowry” (Аще кто женоу оузметъ по законуу или с прикиѡм или без прикиѣ и оумрѣтъ мѡуъ, а жена встанетъ бесчѣдна, да се придаст ѣи къ всемоу ѣеинѡ и вт мѡжевиѣ прикиѣ четвѣрти дѣль).⁵⁴ Article 32 orders: “If a husband agrees with his consort to inherit her after her death, as regards that a dowry remains his property, any other consent is not necessary” (Ащѣ ли съгласитъ мѡжъ съ женоу своѣю да оумирающѣи ѡнои наслѣдитъ ѣю, рекше да встанетъ прикиѡ оу ѣеѣа. Съгласиѣ непотрѣбно ѣстъ).⁵⁵

The Law Code of Stefan Dušan mentions dowry (*prikija*) only in article 44, speaking on *otroci* (slaves). However, that provision has already been explained above (see Chapter 5, section 3.2).

Serbian legal sources very often use the expression *prikisati* (прикисати) or *u prikiju dati* (ѡ прикиѡ дати), both meaning “to give as a dowry”, generally when they speak of the different ways of alienation of a thing (transfer of the property). We have already mentioned these documents: the so-called “*Tapiya* from Prizren”;⁵⁶ Tsar Uroš’s charter granting Mljet Island to Bivolčić and Bučić, noblemen from Kotor;⁵⁷ and the charter of Despot Đurađ Branković in favour of headman Radič.⁵⁸

It is interesting that article 40 of Dušan’s Law Code, proclaiming the right of noblemen to dispose freely of their inheritances, does not mention giving a dowry (*prikisati*) as a way of alienation of a thing (transfer of property): “And those charters and decrees which my majesty hath granted and shall grant, and those inheritances, are confirmed, as also those of the first Orthodox Tsars: and they may be disposed of freely, submitted to the Church, given for the soul or sold to another” (И вѣси хрисоволѣе, и простаг’ме, цю ѣстъ комѡ оучинило царство ми, и цю ке комѡ оучинити и тезѣи бащине да сѡ твѣрдѣ, каконо и прѣвѣиѡх прѣвѣтрѣиѡх царѣ; да сѡ вол’ны ными и под цѣрковѣ дати, или за доушѡ ѡдати, или иномѡ продати комѡ любо).⁵⁹ However, it is hard to believe that noblemen

54 Edited by Marković, pp. 60–61.

55 Ibid., p. 61. However, the wording of article 32 is not clear enough. It seems that a clerk confused dowry with hereditary rights.

56 Ed. Bubalo, *Srpski nomici*, pp. 250–252.

57 Ed. R. Mihaljčić, *SSA* 3 (2004), pp. 71–87.

58 Ed. Novaković, *Zakonski spomenici*, p. 334.

59 Burr, “The Code of Stephan Dušan”, p. 207; Novaković, *Zakonik*, p. 36; *Zakonik cara Stefana Dušana*, vol. III, p. 110.

could not dispose with that right, because contemporary charters mention this way of alienation.⁶⁰ Besides, article 174 says: “Workers on the land who have their own inherited property, land, vineyards or purchased estate, are free to dispose of their own lands and vineyards, to give them as dowries, to give them to the Church, or to sell them” (Людіе земліане кои имаю свою бацинѣ, землю и виноградѣ, и коуплєнице да сѣ вол’ны вт своих виноградѣ и вт земліе оу прикїю втдати, или црькви подложити, или продати).⁶¹ So, as commoners (*sebri*) had the right to alienate their hereditary estates by giving them as a dowry, it is probable that noblemen had the same right as well. As Dušan’s Law Code does not survive in its original text, the non-appearance of the abovementioned provision could be due to the negligence of the copyist. Otherwise we probably have a defective transcript of the Law Code.⁶²

3 Dissolution of Marriage

Marriage could be dissolved by death, prolonged absence, enslavement and divorce.

Marriage was dissolved by death. In some cases a widow was not free to remarry immediately.

Prolonged absence could have the same effect as death on a marriage. The absence of news from a spouse for a considerable period, and circumstances from which death might be presumed, could end a marriage.

The enslavement of a spouse terminated the marriage.

Divorce (*divortium*, *repudium*, *difarreatio*, λύσις, διαζύγιον, разрѣшенїе) is the legal separation of man and wife, effected by the judgment or decree of a court, and either totally dissolving the marriage relation or suspending its effects so far as concerns the cohabitation of the parties.

The first Serbian legal document that treats of divorce was the charter presented by King Stefan the First Crowned to his foundation, the monastery of Žiča. The charter exposes a concept that divorce is impossible, saying: “And the Testimony, followed by the Church constitution and tradition, forbids a separation of man from wife, and wife from man” (И по томоу божьствени сз законъ наѣуивъше по црьковномуу ѡставѣ и прѣдани, и господско запрѣщєнїе

60 Cf. Solovjev, *Zakonodavstvo Stefana Dušana*, p. 132.

61 Burr, “The Code of Stephan Dušan”, p. 533; Novaković, *Zakonik*, p. 136; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

62 Solovjev, *Zakonodavstvo Stefana Dušana*, p. 132. See also S. Šarkić, “Provisions of Roman Law on Dowry in Serbian Mediaeval Law”.

бысть: не разлоуѣати се могуѣу ѡтъ жене и женѣ ѡтъ мужа).⁶³ Marriage could be divorced only by judicial process, and the only ground that was mentioned was adultery (никтоже да не ѡстаѡляѡтъ божьствѣнаго сего закона, развѣ словесе прелюбоудѣнаго, и тои истинно да испитаѣтъ се съ расѡуждениѣмъ).⁶⁴ Everyone who turned a deaf ear to this order, which our charter calls a “frightful command” (сѡю страшноуѣю заповѣдѣ), would be fined in cattle, according to his legal status.⁶⁵ The charter speaks separately on the responsibility of the wife and wife’s parents: if a wife self-willingly abandons her husband, she would be punished with a fine, if she had her own property; if she did not have her own property, a husband could beat her up if it pleased him and return her to the home; if he did not wish to do that, he could sell his wife to anyone (Аще ли ѡ себѣ сама имѣтъ бѣсновати се, ѡстаѡляѡщи своего мѡжа, да аще има добитыкъ добитыкомъ да наказѡѣтъ се, аще ли добитыка не има, то своимъ тѣломъ да наказѡѣтъ се, ѡкоже бѡдетъ изволение мѡжа еѣ. Наказавъ ю, да ю водить; аще ли не бѡдетъ емѡ ѡгодѣна водити, то наказавъ ю да ю продастъ камо емѡу годѣ).⁶⁶ A husband who drove away his wife would be fined and forced to return her to his home. If he would not obey God’s Commandment “the Divine Church will tie such a person and he will be not in loving-kindness” (мѡжъ кои бѡдетъ пѡстиль женѡ, да ю възврати въ домъ свои; аще ли сего не имѣтъ послѡшати, то такови и ѡтѣ божьствѣннѣ цркви да бѡдетъ заѡезанъ и ѡтѣ господина еи да не бѡдетъ ѡ милости).⁶⁷ He who took a second wife had to give adequate indemnity to the first wife (И аще вторѡ женѡ поимѣтъ, да дастъ ѡслѡхѡ подобнѡ прѡвон).⁶⁸ Beside the husband who took a second wife, the individual who acted as officiant in the second marriage would be punished as well (или кто таковомъ женѡ дасть, иже не име хѣтѣти свое възлеци, то и ты да ѡпадаѣтъ ѡ такоже наказаниѣ, ѡкоже и пѡстивии).⁶⁹ Such a marriage had to be dissolved. If the parents or some other kinsmen would kidnap a married woman, they would be punished according to their legal status (Аще ли котора родители ѡтемлет се или инѣмъ коимъ симъ, то такови да наказѡуѣтъ се противѡ санѡ своему).⁷⁰

As well as the *Žiča* chrysobull provisions on divorce, we have those contained by the *Zakonopravilo* or *Nomokanon* of Saint Sabba, created almost in

63 Mošin, Ćirković, and Sindik, *Zbornik*, p. 94.

64 Ibid., p. 95.

65 Ibid., p. 94. See Chapter 5, section 3.2.

66 Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

67 Ibid., p. 95.

68 Ibid., p. 95.

69 Ibid., p. 95.

70 Ibid., p. 95.

the same period. At the beginning we find the rules of canon law. The *Nomokanon*'s Chapter XIII, 4 has a title "On those who are divorcing from their wives" (Глава .д. о распоуцающихъ се съ женами).⁷¹ Apostolic Rule 48 exposes a provision of canon law on the indissolubility of marriage: "The layman who left his wife and took another, or took for wife a divorcee—let him be excommunicated" (Мирьски чловѣкъ свою женоу поустивъ и дрогоую поимъ или поущеницею вженивъ се вътѣлоучень).⁷² Rule 87 of the Council of Trullo (the Quinisex Council from 691–692) says: "A wife, left by her husband, who took for her husband another man, is an adulteress; and whoever has left his wife and has taken another, he has committed adultery, according to the Words of the Lord" (Иже вътѣ мужа поущена бывши жена, за дрогоу поидеть, прѣлюбоудница естъ. и поустивъи женоу свою и иноую поимъ, прѣлюбы творить, по господиу глагоу).⁷³ However, the greatest number of provisions concerning divorce is contained in the translation of the *Procheiron* (Chapter 55 of *Nomokanon*). Chapter XI of the *Procheiron* has a title "On divorce and its grounds" (Περὶ λύσεως γάμου καὶ τῶν αἰτίων αὐτοῦ, ѿ раздѣшеніи брака и о винахъ его) and contains 21 provisions of Graeco-Roman law.⁷⁴

The most systematic exposition on divorce and its grounds is contained in the *Syntagma* of Matheas Blastares in Chapter Г-13, under the title "What are the grounds for divorce" (Ὁ γάμος ἐκ ποίων αἰτίων λύεται, Бракъ отъ которыхъ винъ раздѣшаютъ се).⁷⁵ At the very beginning of Chapter 13, Matheas Blastares says that the *Procheiron* (*Zakon gradski*) in several places speaks on divorce, but Justinian's *Novella* entirely explains all grounds for divorce,⁷⁶ asked either from husband or from wife. It was necessary, says Blastares, because in antiquity laws permitted people to divorce without any grounds; a husband would simply say to his wife: "Woman, do on your own way" and she to him "Man, do on your own way" (Γύναι, πράττε τὰ σά· καὶ ταύτην ἐκείνῳ· Ἄνερ, πράττε τὰ σά, Жено, дѣи своя; и тои ономоу: Мужоу, дѣи своя).⁷⁷ As such a practice was suspended to Christians, "pious Tsars" exposed exactly all grounds for divorce: everything except the quoted was considered as unlawful divorce (ἀθέμιτον διασπᾶν, беззакон'но естъ сыи растръзати).⁷⁸

71 Petrović and Štavljanin, *Zakonopravilo Svetoga Save I*, p. 100.

72 Ibid., p. 138.

73 Ibid., p. 466.

74 Ed. Zepos, vol. II, pp. 145–150; ed. Dučić, pp. 288–296; ed. Petrović, pp. 281b–287a.

75 Ed. Ralles and Potles, p. 175; ed. Novaković, p. 183.

76 Justinian's *Novella* CXVII, 8 and CXVII, 9.

77 Ed. Ralles and Potles, p. 176; ed. Novaković, p. 184.

78 Ed. Ralles and Potles, p. 176; ed. Novaković, p. 184.

At the beginning were cited grounds for divorce caused through the wife's fault (Αἱ αἰτίαι τῆς γυναικός, Вины жены). The text starts with the following words: "A husband sends to his wife the *repudium*⁷⁹ and keeps the dowry, as it was said, from the following grounds" (Καὶ ὁ μὲν ἀνὴρ πέμπει ῥεπούδιον τῇ γυναικί, καὶ τὴν προίκα ταύτης ἀποκερδαίνει, ὡς εἴρηται, διὰ τὰς αἰτίας ταύτας, И оубо мужъ послалаетъ книгоу женѣ и прикыю тоѣ придобывааетъ, іакоже рече се, за сѣхъ ради винъ):

- 1) If a wife comes to know that some persons threaten imperial power (τῇ βασιλείᾳ ἐπιβουλεύοντας, на царство навѣсты), and does not inform her husband;
- 2) If a wife was accused of adultery (μοιχεία, прѣлюбодѣиство) and it was lawfully proved that she had committed adultery;
- 3) If she, in any way, brings into danger the life of her husband or comes to know that some other people plan that, and does not inform him.
- 4) If a wife goes with an unknown male person and without consent of her husband to a feast or watering-place (συμποσάζῃ ἢ συλλούηται, или с ними баніається).
- 5) If a wife stays without the consent of her husband out of her house, except if she is with her parents; or, if the husband, from abovementioned grounds, throws her out of the house and she, having no parents, spent a night out of the house.
- 6) If a wife goes to watch horse-races, or to the theatre, or to the games with beasts (Ἐὰν ἰππικοῖς, ἢ θεάτροις, ἢ κυνηγεσίοις παραγένηται, ἐπὶ τῷ θεωρῆσαι, Лице на коніерисканиѣ, или на позори, или на ловленіи, сырѣтъ на напоуценіи зѣвѣрен прїидеть зрѣти), without the knowledge of her husband or in spite of his prohibition.
- 7) "Scripture says that the adulteress has not to go back to her husband, meaning that he does not desire to accept her back. If the husband forgives her sin, it is not forbidden that he accepts her back, within two years, according to the Novels of Justinian and Leo the Wise."⁸⁰

After exposition of the grounds for divorce caused by the wife's fault, we find the grounds caused by the husband's fault (Αἱ αἰτία τοῦ ἀνδρός, Вины мужа). A wife sends to her husband *repudium*, from the quoted grounds, and she can take her dowry and gift on account of marriage (τοὺς γάμους δωρεὰν τοῦ ἀνδρός,

79 In Roman law, *repudium* was a breaking off of the contract of espousals, or of a marriage intended to be solemnized. The Greek text of the *Syntagma* used the word ῥεπούδιον, from Latin *repudium*, while the Serbian translation used the expression книга = lit. "a book", but also a decision, command.

80 Ed. Ralles and Potles, p. 176; ed. Novaković, p. 184. Cf. Justinian's *Novella* cxvii, 8.

и ниже браковъ ради даръ мѹужевны) that she got from her husband; besides this, she has a right to administer the property granted to her children.

The grounds for divorce caused by the husband's fault are the following:

- 1) If a husband plots against imperial power, or knows that someone else hatches a conspiracy, and does not inform, directly or indirectly, the imperial authorities;
- 2) If he, in any way, brings into danger the life of his wife;
- 3) If he stains her honesty, encouraging her (his wife) into adultery with other men;
- 4) If a husband was unfaithful to his wife with another woman, and he does not want to break this relation;
- 5) If a husband in the same house or in the same town has a relationship with another woman and does not want to break it, in spite the warning of his wife, or her parents, or someone else.

The next title reads: "Divorces without indemnity and on dissolution of marriage because of entering a monastery" (Λύσις γάμου ἀζήμιος, καὶ περὶ τοῦ δι' ἄσκησιν λυομένου γάμου, РАЗДРЪШЕНІА БРАЧ'НАА БЕЗЪ ТЪШТЕТИ И О НИЖЕ ПОСТИНУБЪСТВА РАДИ РАЗДРЪШАЕМОУ БРАКОУ):

- 1) A marriage will be divorced, without paying indemnity, when a husband cannot have sexual intercourse with his wife within three years, even if he does not want to do that. A husband keeps the gift before marriage (*donatio ante nuptias*).⁸¹
- 2) A marriage will be divorced when one of the spouses wants to accept tonsure (ἄσκησις, ποστιнубъство).⁸² This kind of divorce is possible even without consent of one of consorts "and we say that the marriage was divorced by Divine grace" (καὶ λέγομεν ἀγαθῇ χάριτι τὴν διάζευξιν γίνεσθαι, и глаголемъ благою благодѣтїю распреженїю бывати); the "remaining person" (τὸ περιλειφθὲν πρόσωπον, оставше лице) can enter freely into a second marriage relationship.⁸³
- 3) A marriage will be divorced when either man or woman are in captivity and it is not clear, within five years, whether they were alive.⁸⁴

The following text exposes what kind of punishments there would be for those who had the impertinence to dissolve a marriage for any grounds which were

81 This provision was taken from *Basila* XXVIII, 7, 4.

82 From Latin *tonsura*, a shaving, from *tondere* = to shave, the act of clipping the hair or of shaving the crown of the head. In the Roman Catholic and Orthodox Eastern churches, it was the first ceremony used for devoting a person to the service of God and the Church.

83 Cf. Justinian's *Novella* CXXIII, 40.

84 Ed. Ralles and Potles, pp. 177–178; ed. Novaković, p. 187.

not quoted. Such persons would be imprisoned in a monastery and their property would be distributed to their descendants; as long as they are in the monastery, they can dispose only with a small part of their property. However, the legislator did not say what quantity of property the offenders had at their disposal and whether this property was sufficient for their sustenance in the monastery. If they did not have any descendant or older relative, their property would belong to the monastery in which they were imprisoned. Those persons who composed such illegal contracts (ἀθέμιτα συμβόλαια, *βεζακον'ναα ζαπικαν'ια*) would be punished with corporal punishment (it was not mentioned what kind of corporal penalty would be apply) and be exiled (εἰς σῶμα ποιναῖς ὑποβάλλεσθαι, καὶ εἰς ἐξορίαν πέμπεσθαι, *тѣлеснои казни прѣдати се и въ затореніе отсилати се*).⁸⁵ If the divorced persons expressed a wish to live together again, before they entered the monastery, they were free to do that, and punishment would be pardoned and they could enjoy their property. If one of the consorts wished to restore a marriage union, and the second did not want that, the punishment would remain. At the end of the text we read: "We order it to be like this, according to the decision of God-loving bishops" (ταῦτα δὲ κελεύομεν γίνεσθαι καὶ κατὰ πρόνοιαν τῶν θεοφιλεστάτων ἐπισκόπων, *ѡа же повелѣваемъ бывати и промыслуъ боголюбовиыхъ епископъ*).⁸⁶

Divorce by mutual consent was allowed if both consorts wished to enter a monastery. However, if one of the spouses entered into a marriage or fornicates, the whole of their property will belong to the children. If there were no children, the property would be received by the imperial treasury (τὸ δημόσιον αὐτὴν διαδέξεται, *царина ѡѣ прѣиметь*).⁸⁷

However, it is not possible to say whether such detailed rules concerning the grounds for divorce were actually applied in mediaeval Serbia, because we do not have the relevant legal sources.⁸⁸

85 Ed. Ralles and Potles, p. 178; ed. Novaković, p. 187. The Greek text mentioned a penalty of ἐξορία = exile, while the Serbian text speaks of *zatočenje* = captivity. "Exile" as a punishment seems to me more probable, because Byzantine law does not know long-lasting deprivation of freedom.

86 Ed. Ralles and Potles, p. 179; ed. Novaković, p. 187. The provision was taken from *Basilika* xxviii, 7, 6.

87 Ed. Ralles and Potles, p. 179; ed. Novaković, p. 187. The provision was taken from *Procheiron* xi, 4 (ed. Zepos. vol. II, p. 146), i.e. Justinian's *Novella* cxxiii, 40.

88 See S. Šarki, "Die Gründe für die Ehescheidung im serbischen mittelalterlichen Recht", in *Rechtstransfer in der Geschichte, Internationale Festschrift für Wilhelm Brauner zum 75. Geburtstag*, ed. Gábor Hamza, Milan Hlavačka, and Kazuhiro Takii (Berlin 2019), pp. 349–358.

4 Extended Family (So-called *Zadruga*, Задруга)

Besides the immediate family, called *inokosna* or *inokoština* (“individual family”), consisting of a father, a mother and their children, in Serbian mediaeval law there also existed the extended family, called *zadruga*.⁸⁹ A *zadruga* refers to a type of rural community similar to the Roman *consortium*, which is historically common among Southern Slavs. Originally formed by one extended family or a clan of related families, the *zadruga* held its property, herds and money in common with usually the oldest member (*patriarch*, Serbian *starešina*, *сма-пешина*, *pater familias* of Roman *consortium*) ruling and making decisions for the family, though at times he would delegate these rights at an old age to one of his sons.⁹⁰ Within the *zadruga*, all of the family members worked to ensure that the needs of every other member were met.⁹¹

Serbian 13th- and 14th-century charters mention *zadruga*, but without using that term.⁹² The expression designating extended family was *kuća* (кућа) =

89 *Zadruga* is similar to Roman *consortium*.

90 Vuk Stefanović Karadžić (1787–1864), philologist and linguist, major reformer of the Serbian language in his *Srpski rječnik istumaen njemačkim i latinskijem riječima* [Serbian Dictionary, Paralleled with German and Latin Words] (Vienna 1852, reprint Belgrade 1972), explained *zadruga* as *Hausgenossenschaft, plures familiae in eadem domo* (p. 173). On *zadruga*, see also J. Peisker, “Die serbische Zadruga”, *Zeitschrift für Sozial- und Wirtschaftsgeschichte* 7 (1900), pp. 211–326, and B. Nedeljković, “Postanak zadruge” [“Genesis of Zadruga”], *Pravna misao u čast Živojina Perića* 3.11–12 (1937), pp. 595–604 = *Selected Works* (Podgorica 2005), pp. 453–462.

91 Serbian lawyer Jovan Hadžić (1799–1869), the author of the Serbian Civil Code (Српски грађански законик) of 1844, defined extended family (*zadruga*) as follows. Article 507: “*Zadruga* exists wherever a community of life and property is established and determined by ties of blood relationship or adoption” (Задруга је онде, где је смеса заједничког живота и имања свезом сродства или усвојењем по природи основана и утврђена); article 508: “All real estate and property found within a *zadruga* is not owned by one person but by all; and anything one person living in a *zadruga* acquires, is not acquired for his own self but for all” (Што је год имања и добара у задрузи, није једнога но свију, и што год који у задрузи прибави, није себи но свима је прибавио). The fact that the 19th-century Civil Code regulates *zadruga* means that such a kind of extended family still existed in Serbia, and Hadžić dedicated to it Chapter xv (articles 507–529), entitled “On the law of succession and relations in *zadruga*” (О наследним правима и односима у задрузи). We have to remark that the Austrian Civil Code (Österreichs Allgemeines Bürgerliches Gesetzbuch) of 1811, which was the role model for the Serbian Civil Code, does not contain a chapter concerning *zadruga*. See S. Avramović, “The Serbian Civil Code of 1844: A Battleground of Legal Tradition”, in *Konflikt und Koexistenz. Die Rechtsordnungen Südosteuropas im 19. und 20. Jahrhundert, Band 11, Serbien, Bosnien-Herzegowina, Albanien*, ed. Thomas Simon with Gerd Bender and Jani Kirov (Frankfurt am Main 2017), pp. 379–482.

92 Recent works have pointed out that the word *zadruga* itself originated only in 1818.

house. Among Serbian charters, the Dečani chrysobull is especially rich with information on villagers' *zadruga*s: on the monastery's manor there existed more than 2,000 commoner's houses. According to the research of Stojan Novaković, who analysed the data given by the Dečani charter, the greatest number of houses had between 7 and 11 men, and only a few had between 13 and 16 males. The largest *zadruga* was of a certain family Lačković from the village of Seroš (Сѣрошь), consisting of 19 males.⁹³ Here is the list of the family males presented by the Dečani chrysobull:

Tolislav, and his sons Radoslav and Bogoje, and Radoslav's sons Otmič and Vladislav and Krušac, and Bogoje's son Božić, and Tolislav's male cousins: Grade and Priboje and Vojsil, and Grade's sons Vitomir and Bogoslav; Priboj had a son Baldovin, and Tolislav's [another] male cousins: Dobroslav and Smilj and Miloš and Stepan; Dobroslav had a son Očinja and Hranislav Desimirović, and their grandfather was Lačko.

Толиславъ а синь моу Радославъ и Богоје а Радославоу синь Ѡтмигъ и Владиславъ и Кроуш'ць а Богою синь Божиць. а Толиславоу братанъ Граде и Прибоје и Вонсилъ а Градетевѣ синь Витомиръ и Богославъ. оу Прибоја синь Бал'довинъ. а Толиславоу братанъ Доброславъ и С'милъ и Милошъ и Степанъ оу Доброслава синь Ѡчинѣ и Храниславъ Десимирикъ а д'ѣдъ имъ Лаѣ'ко.⁹⁴

So, the structure of this *zadruga* was: head of the family was Tolislav, and he was the most senior person. The second generation was represented by Tolislav's sons Radoslav and Bogoje and Tolislav's male cousins Grade, Priboje and Vojsil, who were sons of one of Tolislav's deceased brothers, and also Dobroslav, Smilj, Miloš and Stepan, who were sons of a second of Tolislav's deceased brothers. The third generation of the same *zadruga* consists of Tolislav's grandsons: Otmič, Vladislav and Krušac (sons of Radoslav) and Božić, son of Bogoje; also grandsons of one of Tolislav's deceased brothers, Vitomir and Bogoslav (sons of Grade) and Baldovin, son of Priboj; finally Očinja, son of Dobroslav and grandson of second defunct Tolislav's brother. Hranislav Desimirović, who was mentioned at the end of the list, obviously was not born as Lačković, and he entered into the *zadruga* by marriage. Grandfather Lačko was the common ancestor of the family. At the time the list was compiled, Lačko was not alive, otherwise his name would have been quoted at the beginning of the record.⁹⁵

93 Novaković, *Selo*, pp. 159–161.

94 Edition Ivić and Grković, *Dečanske hrisovulje*, pp. 119–120.

95 Cf. Taranovski, *Istorija*, vol. 11, pp. 52–53.

Similar data can be found in Saint Stephen's charter, King Milutin's charter presented to the monastery of Hilandar, and Saint Archangels' chrysobull.⁹⁶ However, those families were not as large as the Lačković's *zadruga*.

It was obvious that Serbian rulers tried to break extended families, because taxes were paid per house, and the intention was to increase the number of taxpayers. This is clear from the text of King Vladislav's charter issued to the church of Holy Virgin Bistrička (1234–1243), where we read: "A son, after his marriage, has to live with his father for three years; after three year he has to start a personal service to the church. If he is the only son, the monastery superior (hegoumenos) has to give him an assistant who will support him" (и сынъ съ вѣтъцѣмъ да сѣди вженив се три годища. Конь трехъ годищъ да постоупа оу вѣсобноу работоу цркви. Ако ли є єдиначь, да моу игоумень даа стицника кога разоумѣ).⁹⁷ However, one century later we can see that *zadrugas* were still present in villagers' life (Dečani charter from 1330).

It seems that in the 14th century *zadrugas* went into decline, and the individual families were de facto separated. However, they pretended to live together with a purpose of avoiding excessive tributes and customary labour services. For this reason, article 70 of Dušan's Law Code says that "If there dwell in one house either brothers or father or sons, or any other, independent by bread or property but yet dwelling in one hearth, let him do service like other small people"⁹⁸ (И кто се вѣрѣте оу єдиной коукиє, или братен'ци, или вѣтъць вѣт сыновъ, или инь кто вѣдельнь хлѣбомъ и иманіємъ; и ако воудѣ на єдиномъ вѣгници, а тем'зи вѣвѣленъ, да работа іако инѣи малѣи людѣ).⁹⁹

96 The examples were minutely analysed by Novaković, *Selo*, pp. 159–173.

97 Mošin, Ćirković, and Sindik, *Zbornik*, p. 167.

98 The expression "small people" means commoners or villagers.

99 Burr, "The Code of Stephan Dušan", p. 211; Novaković, *Zakonik*, p. 57; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

PART 5

Criminal Law



Crime

Criminal law is the body of law that relates to crime. A crime consists of either the commission or the omission of a voluntary act (known as *actus reus*) punishable by death, imprisonment, fine, removal from office or disqualification to hold and enjoy any office of honour, trust, or profit. No act is criminal unless it is both prohibited and penalized by the law of the place where it is committed. In addition, to protect the innocent, the law requires the act to be committed with a particular state of mind known as *mens rea*, which means criminal intent.¹

1 Byzantine Concept of Crime

Byzantine law had a different concept of crime from modern law. Under the strong influence of canon law, some types of behaviour were considered unlawful acts and were not excluded from liability, especially if the conduct was regarded as a sin. The Church also made a notable contribution in the field of criminal law by insisting that crime should be treated from the point of view of sin, and consequently the theories of moral theologians concerning the place of intention in sin became part of the law of crime. In the case of pederasty (the carnal copulation of male with male, particularly of a man with a boy), for example, both persons, an adult (preditory) and a pubescent or adolescent boy (violated) shall be punished by the death penalty, except if the boy was under 12 years old (Οἱ ἀσελγεῖς, ὃ, τε ποιῶν καὶ ὁ πάσχων, ξίφει τιμωρεῖσθωσαν, εἰ μὴ ἄρα ὁ πεπονθὼς ἐλάττων εἶν τῶν ἱβ' ἐτῶν, СКВРЬНИЦИ МОУЖЬСКА ПОЛОУ, ТВОРЕН ЖЕ И СТРАЖДЕН, РЕК'ШЕ ПРИЕМЛЕНИ СКВРЬНОУ, МЬЧЕМЬ ДА ТОМЛЕНЬ БОУДЕТЬ, РАЗВѢ АШТЕ ПОСТРАДАВЫ МЫН'ШИ КЕСТЬ. ВЛ. ЛѢТЬ).² It is clear that the local age of consent was 12 years.

Attempted suicide (αὐτοκτονία) was a crime in all mediaeval laws, including Byzantine, where it was considered “a worse crime than divorce”. The *Syntagma* of Matheas Blastares contains a short chapter (B-12) under the title “On those who take their own lives, i.e. on suicides” (Περὶ τῶν βιοθανῶν, ἧτοι τῶν ἑαυτοὺς ἀναιροῦντων, Ο ποуждено оумьр'шихъ, рек' ше себе оубиваюштихъ). The chapter

1 See G.W. Brown, *Legal Terminology* (Upper Saddle River NJ 2008), p. 83.

2 *Syntagma* of Matheas Blastares, Chapter A-14, entitled “On pederasty” (Περὶ ἀρρενομανίας, Ο μοужененствоу'ствѣ). Ed. Ralles and Potles, p. 105; ed. Novaković, p. 108.

has only one ecclesiastical rule of Timothy I of Alexandria (Τιμόθεος Α')³ and a law taken from the *Basilika* (LX, 3, 53), saying: "The one who has committed a suicide, or wanted to commit it from fear of crime and not from malady, shall be punished as the one who had killed somebody, and his property shall be confiscated" (Ὁ ἑαυτὸν ἀνελών, ἢ ἀνελεῖν ἐπιχειρήσας, διὰ φόβον ἐγκλήματος καὶ μὴ διὰ νόσον, τιμωρεῖται ὡς ἀνελών ἕτερον, καὶ ἡ οὐσία αὐτοῦ δημεύεται, Иже себе оубивѣи или оубити наꙋнь стрѣха ради съгрѣшенїи, а не недоуга ради, томымъ кестъ ꙗкоже оубивѣи иного, и иманїе его разграбляеѣтъ се).⁴

Self-defence is an excuse for the use of force in resisting attack. In modern law victims of attack may use no more force than is necessary to stop the attack, but Byzantine law does not punish the killing of an attacker (if the attacker endangers the life of the victim).⁵ The *Syntagma* of Matheas Blastares in Chapter Λ (Λ) - 6, entitled "On those who kill brigands" (Περὶ τῶν ληστὰς ἀναιρούντων, О иже разбойники оубивающѣхъ), contains a rule which says: "The one who has killed an attacker who threatened his life is not held guilty, because in trouble everyone has to defend himself, and not to expect help from the law. It is allowed without danger to kill a brigand who attacks" (Ὁ τὸν ἐπελθόντα φονεύσας, ἐν ᾧ περὶ τὴν ζωὴν ἐκινδύνευσεν, ἀνέυθυνός ἐστιν· ἐν γὰρ τοῖς κινδύνοις ὀφείλει ἕκαστος ἑαυτὸν ἐκδικεῖν, καὶ μὴ τὴν τῶν νόμων ἀναμένειν βοήθειαν. Τὸν ληστήν ἐπιόντα, ἀκινδύνως ἕξεστι φονεῦειν, Иже нашьдшаго на нь оубивъ, имъже о животѣ бѣдѣствовати хотѣаше, неповинънъ кестъ; въ бѣдахъ бо дльжньнъ кестъ къждо себе отмышлати, а не закон'ноꙋю ожидаѣти помощѣ. Разбойника нападоꙋштаго безъбѣдно лѣтъ кестъ оубивати).⁶ There is a similar provision in Chapter Φ-7, taken from the *Procheiron* xxxix, 39 (i.e. the *Basilika* LX, 39, 14 and 15), which reads as follows: "The one who has killed an attacker, i.e. a person who rushed at him, and his life was in danger, is not held guilty" (Ὁ τὸν ἐπελθόντα

3 Pope Timothy I of Alexandria, 22nd Pope of Alexandria and Patriarch of the See of Saint Mark, died about 20 July 384. He presided over the Second Ecumenical Council at Constantinople, called by Emperor Theodosius.

4 Ed. Ralles and Potles, pp. 149–150; ed. Novaković, pp. 155–156.

5 *Cod. Iust.* IX, 16, 2, Imp. Gordianus A. Quintiano (April 243): *Is, qui adgressorem vel quemcunque alium in dubio vitae discrimine constitutus occiderit, nullam ob id factum calumniam metuere debet*; *Procheiron* xxxix, 39 (ed. Zepos vol. II, p. 220): Ὁ τὸν ἐπελθόντα φονεύσας, ἐν ᾧ περὶ τῆς ζωῆς ἐκινδύνευεν, ἀνέυθυνος ἔσται. There is a similar provision in the Statute of Dubrovnik, VI, 1 (ed. Dubrovnik 2002, p. 324): *Quicunque fecerit homicidium, nisi se defendendo, quod plene possit probari, moriatur*. Cf. Chapter 14 of the Statute of the Island of Korčula (today in Croatia), edited by J.J. Hanel, *Statuta et leges civitatis et insulae Curzulae* (1214–1558), *MHJSM, pars I, vol. I* (Zagreb 1877), p. 24 and Chapters 45 and 99 of the Statute of the City of Split (also in Croatia), edited by J.J. Hanel, *Statuta et leges civitatis Spalati* (1312), *MHJSM, pars I, vol. II* (Zagreb 1878), pp. 155 and 293.

6 Ed. Ralles and Potles, pp. 353–354; ed. Novaković, pp. 372–374.

φρονεῦσας, ἐν ᾧ περὶ τὴν ζωὴν ἐκινδύνευεν, ἀνεύθυνός ἐστιν, Иже нашьдшаго, рекше наидхавшаго оубивъ, имьже о животе бѣдѣствоваше, неповин'нь естъ).⁷

Dušan's Law Code speaks on self-defence only in article 86: "When there is a homicide, he is held guilty who provoked it, even if he be killed himself" (Гдѣ се вбръѣте оубиство, онѣи конно боудѣ зарѣвалъ, да естъ кривъ ако се и оубиѣ).⁸ "As killing involved a wergild, perhaps this clause implies that the kindred of the guilty party pay the fine, while the family of the man provoked should be free of liability."⁹

2 Serbian Concept of Crime and the Oldest Expressions

The oldest expressions to designate a crime in Serbian mediaeval law were *obida*, *zlo* and *krivina*. All these terms designate crimes *mala in se* (wrong in themselves), i.e. those that are wrong in and of themselves.

Obida (вбидѣ, ἀδίκημα)¹⁰ was mentioned for the first time in the charter of King Stefan the First Crowned, presented to the monastery of Saint Mary on the island of Mljet (1217–1227), where we read: "And whoever will be a lord after me, either my son or my relative, or someone else, he has no right to destroy this [that I gave to the monastery] doing any crime or violation" (Или кто и боуде владыка по мнѣ, или мое дѣте или присни мои, или ины кто, сега да не разори; или вбидецѣмоу коимъ оусилынемъ комоу).¹¹ The same expression was used in the charter of Saint Sabba to the monastery of Saint Nicholas on the island of Vranjina (1233), where we read: "If someone disturbs this holy place by any crime" (Аще ли кто иметъ сѣ светое мѣсто нечимъ вбидети).¹² In both cases a substantive *obida*, or verb *obideti*, means violation of privileges given to the monastery.

Zlo (зло, зѣло, зѣл, *malum*, literally "evil", "harm") could be found in the oath of Bosnian *Ban* (governor, warden, Vice-Roy)¹³ Kulin to Ragusan Doge

7 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523. The Serbian text is longer.

8 Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

9 Burr, "The Code of Stephan Dušan", p. 215.

10 *Obida* is an Old Slavonic expression to designate a crime, mentioned in articles 2, 4, 7, 11, 13, 19, 29, 33, 34 and 37 of the so-called *Short Edition* (*Kratkaya*) of *Russkaya Pravda*. *Sources of Russian Law*, vol. 1, ed. Zimin, pp. 77–80. The word is no longer used in modern Serbian.

11 Mošin, Ćirković, and Sindik, *Zbornik*, p. 109.

12 Ibid., p. 127.

13 *Ban* was a noble or sovereign title used in Croatia, Hungary, Bosnia, regions of Mačva and Banat (now in Serbia), Wallachia, Bulgaria and the Kingdom of Yugoslavia between the

Krvaš from 29 August 1189, where it was written: “as much as it is possible, without any evil intent” (КОЛИКО МОГЕ БЕЗЪ ВСЕГА ЗЛОГА ПРИМЫСЛА).¹⁴ We read the same term in the *harangue* (προοίμιον) of the Hilandar chrysobull, issued by monk Simon (Stefan Nemanja) in 1198–1199: “and [God] provided all of them [Princes] with herds to be grazed and protected from every harm” (и ко моужде дасть пастн стадо свое и съблудати є ѿт всакога зъла находецаго на не).¹⁵ The Latin word *malum*, corresponding to the Slavonic term *zlo* (evil, harm), can be read in two places in the treaty of Great Župan Stefan Nemanja with Dubrovnik from 27 September 1186: *Videlicet ut omnia mala ... Item et Sclavi ut apud Ragusium sint salvi et nullum maluum sit eis per terram aut per mare*.¹⁶ In later documents we can often find the same expression, especially in treaties with Dubrovnik. *Krivina* (КРИВИНА) was mentioned in the oath of Great Župan Stefan Nemanjić to the Ragusans (1214–1217), where we read: “And if any crime happened between the City [Dubrovnik] and my country” (нѣ ако се ѡчини кри-ВИНА мѣгю градомъ и мовѣ зѣмловѣ).¹⁷ So, the King regulated cases of crimes in relations between Serbia and Dubrovnik.

Some legal documents call crime by the name of its consequence, such as *krv* (КРВЬ) and *vražda* (ВРАЖДА). Literally *krv* means blood, but in mediaeval Serbian legal terminology the word designates at the same time a crime of bloodshed (wounding of people), its consequence and a fine that had to be paid for the crime.¹⁸

7th and 20th centuries. The word is of Turkish origin, and the first known mention of the title *Ban* is in the 10th century by Constantine VII Porphyrogenitos as βoάνος, dedicated to the organization of the Croatian mediaeval State. According to his story, the Croatian State was divided into 11 *županijas* (*župas*) and the *Ban* rules over Krbava (τὴν Κρίβασαν), Lika (τὴν Λίτζαν) and Gacka (τὴν Γουτζισκά). After 1102, as Croatia entered a personal union with the Hungarian Kingdom, the title of *Ban* was dropped in favour of the new office title *Vice-Roy*, appointed by the Kings.

Bosnian rulers were called *Bans* from the 12th century until 1377, when Tvrtko I took the title of King.

Ban was also used in the Kingdom of Yugoslavia between 1929 and 1941. The State was divided into 9 governorships (*banovine*) and *Ban* was the title of the governor of each *banovina*. The weight of the title was far less than that of a mediaeval *Ban*'s feudal office.

The word *ban* is preserved in many modern toponyms in the regions of ex-Yugoslavia (Banovina, Banija, Banat, Banovo polje, Banova jaruga, Banovići, Banski dvori, Banovo brdo, etc.). The term is also found in personal surnames (Strahinić Ban, Sekula Banović, Banić, Banovac). See S. Ćirković, “Ban”, in *LSSV*, pp. 28–29.

14 Mošin, Ćirković, and Sindik, *Zbornik*, p. 52.

15 Ibid., p. 68. See Chapter 8, section 2.

16 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 46, 47.

17 Ibid., p. 87.

18 *Krv* was mentioned in the following documents: King Milutin's treaty with Dubrovnik

The Old Slavonic term *vražda* (вРАЖДА) has several different meanings and is derived from the word *vrag* (вРАГЪ, *vragh*, *vorgŭ*) = ἐχθρός, “enemy”.¹⁹ The expression is present in almost all Slavic languages: in Bulgarian, Russian and Ukrainian (*vorožda*, *ворожда*) it means “enmity”, “hostility”. The Polish words *wrožda*, *wrožba*, *wrož* mean “blood feud”, “vendetta”, and there is the Czech *vražda*—“murder”, “homicide”.²⁰ In Old Serbian, a *vraždenik* (вРАЖДѢНИК) is an enemy,²¹ and in legal terminology *vražda* also means the crime of homicide, its consequence and a fine that had to be paid for murder (*compositio pecuniaria pro homicidio*).²²

Under the influence of Byzantine law in mediaeval Serbia there prevailed a concept of crimes *mala prohibita* (prohibited wrongs)—those that are not in themselves wrong but are criminal simply because they are prohibited by law, prescribed either by State or Church authorities. In the abovementioned treaty of Great Župan Stefan Nemanjić with Dubrovnik (1214–1217) we read: “If they [parties to the contract] transgress this [the agreement]” (Ако ли сие прѣстѹплѹ).²³ This means that it was prohibited to the contractual parties to break a provision prescribed by monarch. In the second chryso-bull of King Stefan the First Crowned and his co-ruler King Radoslav to the monastery of Žiča (1221), crimes against morality (marriage and family) were called “transgression of law” (прѣстѹпление закона) or “transgression of frightful command” (снѹ страшноѹю заповѣдѹ прѣстѹпае).²⁴ The same charter says that if someone takes a sister-in-law for a wife against the law (Аще кто сватѹицѹ прѣзь законѹ ѹзме),²⁵ the fine shall be prescribed according to

(14 September 1302), edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 345; Tsar Dušan's chryso-bull presented to the Ragusans (20 September 1349), edited by D. Ječmenica, *SSA* 11 (2012), p. 39; Dušan's Law Code, articles 103, 183 and 192 (edition Novaković, pp. 79, 141, 144; *Zakonik cara Stefana Dušana*, vol. 111, pp. 126, 152, 276).

19 In modern Serbian *vrag* means “devil”, “Satan”, “the Evil One”.

20 Under Slavic influence, the word penetrated the mediaeval Italian language, and it could be found in the *Statute of Skadar* (Cap. 266, ed. Bogojević-Glušćević, p. 195, *urasba over vendicta*).

21 Treaty of Radoslav, Župan of Hum with Dubrovnik (22 May 1254): НИ ТИ НИ НИИ ТВОИ ЛЮДИЕ ПРОДАДЕНИ ДАРѹЮ НИКОМѹ РЕ ВРАЖДѢНИКѹ ДѹБРОВѹЮКОМѹ. Edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 206.

22 On *vražda* as a payment of 500 *perpers* for a murder committed between Ragusans and Serbs, see Chapter 9, section 2.1. See also R. Mihaljčić, “Vražda”, in *LSSV*, pp. 106–107, and Mažuranić, *Prinosi*, pp. 1602–1604. Cf. the article “Vrag” in Skok, *Etimologijski rječnik*, vol. 111, p. 617.

23 Mošin, Ćirković, and Sindik, *Zbornik*, p. 87.

24 *Ibid.*, pp. 94–95.

25 *Ibid.*, p. 95.

the social status of the perpetrator.²⁶ It is obvious that in these three cases a crime was considered as a transgression of rules promulgated by canon law.²⁷

In later legal sources transgression of rules was referred to by the following terms: *prestupiti*, *preslušati*, *prečiti*, *pretvoriti*, *potvoriti*, and especially to act “against the law” (прѣз законъ, *contra legem*).²⁸ The Law Code of Stefan Dušan introduced the term *sagrešenje* (с҃грѣшєнїє, с҃грѣшєнїє) = sin,²⁹ where the concept of crimes *mala prohibita* prevailed. For example, article 5 mentions “spiritual sin” (“Bishops shall not curse Christians for spiritual sins”, И свѣтителѣ да не проклиная христїанъ, за с҃грѣшєнїє доуховно), while article 52 uses the same expression to designate a crime against the State (“For treason for any sin”, За невѣрѣ въсакѣ с҃грѣшєнїє).³⁰ Later documents accepted the expression *sagrešenje*, as is clear from Tsar Dušan’s charter presented to the lesser lord Ivanko Probištitović (28 May 1350). The Emperor will deprive Ivanko of his manor “only in the case of treason, and not for any other sin” (да мѣ се не потвори царство ми развѣ едине невѣре, а ни за едноє инѣ с҃грѣшєнїє).³¹ Although the term *sagrešenje* prevailed, the old expressions did not completely disappear. For example, article 51 of Dušan’s Law Code uses the old term *zlo* = malum, evil, harm (“And if he do any evil”, ако коє зло оучини).³² Legal terminology was not very developed and sometimes, beside the abovementioned terms, a crime was referred to with the entirely indefinite word *veliko delo* = great matter, as was case with article 151 of Dušan’s Law Code, speaking of juries (“For a great matter, let there be 24 jurors”, За велико дѣло да ѣсть, кѣ, поротници).³³

26 See Chapter 15, section 2.2.

27 Cf. S. Bojanin, “Bračne odredbe Žičke povelje između crkvenog i narodnog koncepta braka”, especially p. 427.

28 Solovjev, *Zakonodavstvo Stefana Dušana*, p. 449.

29 The Serbian translator of Matheas Blastares’ *Syntagma* uses the term *sagrešenje* as a translation of two Greek words: ἀμαρτία and καθόσις. Ed. Novaković, pp. 110 and 325; ed. Ralles and Potles, pp. 107 and 307.

30 Burr, “The Code of Stephan Dušan”, pp. 199 and 208; Novaković, *Zakonik*, pp. 10 and 45; *Zakonik cara Stefana Dušana*, vol. III, pp. 100 and 112.

31 Edited by V. Aleksić, SSA 8 (2009), p. 74.

32 Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 44; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

33 Burr, “The Code of Stephan Dušan”, p. 527; Novaković, *Zakonik*, p. 118; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

3 Crime as Madness or Insanity

In several places in the treaties with Dubrovnik, crime was called *лѹдостъ* (*ludost* = madness) or *безѹмнѣ* (*bezumije* = insanity). For example, King Milutin in his charter presented to the Ragusans from 14 September 1302 says: "And if someone has a mad slave, who performs acts of malice, his master shall be not guilty and [the authorities] shall search the culprit" (И ѹ кога се вѣрѣте лѹдѹ втрѹкъ, терѣ цю комѹ испакости, да ѹ томѹ господарѹ не ицѹ, нѣ да си ицѹ крѣв'ца).³⁴ In the Ragusan's letter to Despot Stefan Lazarević (15 June 1417), complaining about Duke Peter who tried in Novo Brdo two of their merchants and seized their property, we read: "If a man was mad, let his body suffer ... And for the madness of others ... we punished them ... And if someone of our merchants did some insanity let his body and head suffer" (Ако ꙗ чловѣкъ лѹдовааь нека мѹ пать пати ... А за лѹдостѣ инѣхъ ... и вѣдѣ ихъ пѣдѣпсасмо ... ако се коѹ тамо слѹчи тер нашъ трѣговѣць коѹ безѹмнѣ ѹчини, нека га вно-мѹи чловѣкъ пать и глава пати).³⁵ In the following letter (9 August 1417), the Ragusans wrote to Despot Stefan Lazarević that some persons in Novo Brdo are making "madnesses" and that their property was destroyed, saying: "If a man did some madness or insanity it was right and worthily that his body suffer" (да ако чловѣкъ коѹ лѹдостъ или по неѹмѣтельствѹ ѹчини, право и достоино нест да мѹ пать пати).³⁶

However, this does not (necessarily) mean that a culprit was found to be mentally ill if they could prove that he did not know the difference between right and wrong or did not appreciate the criminality of his conduct. He is considered as responsible (mentally sound); only his unlawful acts were regarded as some kind of insanity, "and let his body suffer" (нека мѹ пать пати). Such a qualification was based on a biblical point of view, considering every law as a divine institution, a phenomenon of the Wisdom of God. This idea was expressed in Tsar Dušan's chrysobull giving the village of Potolino to the monastery of Hilandar (January–April 1348): the Serbian Emperor paraphrases one of the Proverbs of Solomon: "By me kings reign, and rulers decree what is just"³⁷ (М'ною царѣ царствѹють и скифтри ихъ ѹтверждають се и сил'ни съ ѹсрѣднемъ прѣв'дѹ пишѹтъ).³⁸ Another Proverb says: "Doing wrong is like a joke to a fool,

34 Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

35 Edited by Mladenović, p. 69.

36 Ibid., p. 72.

37 The Proverbs of Solomon VIII, 15 (ΠΑΡΟΙΜΙΑΙ: δι' ἐμοῦ βασιλεῖς βασιλεύουσι καὶ οἱ δυνάσται γράφουσι δικαιοσύνην).

38 Edited by Ž. Vujošević, *SSA* 5 (2006), p. 117.

but wisdom is pleasure to a man of understanding” (ἐν γέλωτι ἄφρων πράσσει κακά, ἡ δὲ σοφία ἀνδρὶ τίκτει φρόνησιν).³⁹ An unlawful act is almost the same thing as insanity, because the law is not only *ratio scripta* (“written reason”), but a reflection of divine wisdom (*divinae sapientiae*), as well. To commit a crime means at the same time to sin against God and reason, i.e. to commit madness. Such a concept is illustrated by the biblical story of Amnon, David’s son, who wanted to commit the crime of incest with his sister Tamara. She told him: “No my brother, do not violate me, for such a thing is not done in Israel; do not do this outrageous thing. As for me, where could I carry my shame? And as for you, you would be as one of the outrageous fools in Israel” (μή, ἀδελφέ μου· μή ταπεινώσης με, διότι οὐ ποιηθήσεται οὕτως ἐν Ἰσραήλ, μή ποιήσης τὴν ἀφροσύνην ταύτην· καὶ ἐγὼ ποῦ ἀποίσω τὸ ὄνειδός μου; καὶ σὺ ἔση ὡς εἷς τῶν ἀφρόνων ἐν Ἰσραήλ).⁴⁰ However, a culprit who abused his voluntary act is liable and guilty for a sin against God, i.e. his “madness” (ἀφροσύνη).

39 The Proverbs of Solomon x, 23.

40 The Second Book of Samuel (ΒΑΣΙΛΕΙΩΝ Β'), XIII, 12–13.

Culprit

A culprit is one accused or charged with the commission of a crime. It is also commonly used to mean one guilty of a crime or fault. The Serbian word is *krivac* (крив'ць) and can be found already in the treaties with Dubrovnik.¹

1 Individual and Collective Criminal Liability

The building blocks of criminal liability are *actus reus* and *mens rea*. In simple terms, *actus reus* is the guilty act and *mens rea* is the guilty mind, both of which are required for criminal liability. This is expressed by the maxim *actus non facit reum nisi mens sit rea*, which means that “an act alone will not give rise to criminal liability unless it was done with a guilty state of mind”.²

Serbian criminal law differentiates between individual liability (i.e. liability of natural persons—individuals) and collective liability (i.e. liability of legal persons—entities). Among entities, the sources mention the criminal liability of counties (*župa*, жупа),³ households (*kuća*, коук'а, коушта), towns (*grad*, градъ), villages (*selo*, село) and neighbourhoods (*okolina*, околина).

Two articles of Dušan's Law Code speak on the liability of the household (*kuća*, literally house, home). Article 52 treats the matter of high treason (За невьбрѣ)—acts against Tsar—and it says: “For treason for any case brother shall not pay for brother, father for son, kinsman for kinsman, if they dwell separately in their own houses: he who hath not sinned shall not pay anything. Only shall he pay who hath sinned, he and his household” (За невьбрѣ възакѣ сзгрьшеніе братъ за брата, и отъць за сына, родимъ за родима, кто сѣ вдел'ни вадъ вногаз'и оу своихъ коук'ахъ кто ѣ не сзгрьшилъ, тѣз'и да не плати ница, развѣ вн'зи кон ѣ сзгрьшилъ, тогова и коук'а да плати).⁴ The principle of the collective responsibility of the household can be seen in article 71 as well: “Whosoever commits a crime, a brother or son or kinsman, who dwell in one

1 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 213, 216, 343, 454; SSA 11 (2012), p. 38; SSA 10 (2011), p. 63.

2 E. Finch and S. Fafinski, *Criminal Law*, Pearson Education Limited (Harlow 2007), p. 2.

3 On counties (*župa*) see Chapter 9, section 4.4.

4 Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 45; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

house, all shall pay to the lord of the house, or hand over him who did the crime" (И кто зло оучини братъ или сынъ, или родомъ кон сѣ оу единомъ кѣсе, вѣсе да плати господарь кѣсе, или да дастъ кон не зло оучиниш).⁵ It is obvious that articles 52 and 71 are connected, with the difference that article 52 treats the noblemen class, because *nevera* (невѣра = *high treason*) was a crime that could be committed only by a nobleman. Article 71 concerns villagers. However, the collective liability of the household existed only for crimes punishable by a fine.

The liability of the village (*selo*) was already mentioned in King Milutin's treaty with Dubrovnik (14 September 1302). A neighbouring village was responsible for the damage caused to the Ragusan merchants (Да при коимъ ихъ селѣ ѣтега нанде, да плати село ближнѣе).⁶ Several articles of Dušan's Law Code specified the liability of the village as well. Article 99, speaking of arson (ѿ впаляюци коуки), says: "If anyone be found who has burnt a house, or a threshing floor, or straw or hay, let the village give up the burner: and if it do not give him up, then let that village pay what the burner would have suffered and paid" (Кто ли се нанде оужегъ коуки, или гоумно, или сламѣ, или сено, да тозѣи село даа пожежѣцѣ. ако ли га не дастъ, да платѣи внозѣи село цю би пожежѣца патиль и платил).⁷ According to article 20, "if any person be taken out of his grave for magic and be burnt any village that does this shall pay a fine"⁸ (Илюдѣи конѣ сѣ влъховѣствомъ оузимлю изъ гробовѣ тере ихъ изжижѣ, село конѣ тозѣи оучини да плати враждѣ).⁹ The laconic provision, "a brawl between villages, fifty perpers" (Потѣка мегю селѣми, ѿ перьперь),¹⁰ shows that if villages dispute between themselves touching land or boundaries, liability will be on them. According to article 92, "if the village do not deliver him [a thief] to the tribunal, let that village pay so much as the tribunal shall direct" (ако ли га не да село прѣдъ соудѣмѣи, цю покаже соудѣ да платѣи село тозѣи).¹¹ Article 111 says: "Whosoever shall insult a judge ... if it be a village, let it be scattered and confiscated" (Кто

5 Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 58; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

6 Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

7 Burr, "The Code of Stephan Dušan", p. 217; Novaković, *Zakonik*, p. 76; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

8 The word translated as "fine" is *vražda*—a fine that had to be paid for murder.

9 Burr, "The Code of Stephan Dušan", p. 202; Novaković, *Zakonik*, p. 23; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

10 Article 77. Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 62; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

11 Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 72; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

се наиде сѣдѣю вєрамотивъ ... ако ли село да се распѣ и пѣвѣи).¹² Article 159, speaking of merchants (Ѡ коуп'цех), runs as follows: "When merchants come for a lodging for the night, if the reeve or headman of the village do not admit them to rest in the village according to my law as it is in the Code, if the traveller lose aught, that reeve or headman shall pay all, for not having admitted him to the village" (Коуп'ци кои приходе ноцѣю на ложницѣ, ако их не припоустити владальць, или господарь села тоган, да вблѣгѣ оу селѣ коуп'ци, по законѣ царства ми, како естъ оу закон'ницѣ, ако цю изгоуби поутникъ вн'зи господарь или владальць вѣсе да плати, ере их неслѣ оу село оупоустили).¹³ But, according to article 199, the village is not liable "if a horse die in a village and if the village hath not killed it, nor driven it away, but it has died by an act of God, the village shall pay nothing" (И ако конь лип'ше оу комъ селѣ, а не бѣде га село оубило ни вѣгнало, нь оумр'ло вѣт бога да не платѣ ница).¹⁴ Two articles of the Code merit special interpretation. First, article 145, speaking of brigands and thieves (Ѡ гоусарѣ и татѣ), says: "In whatsoever village a thief or brigand be found, that village shall be scattered and the brigand shall be hanged forthwith, and a thief shall be blinded" (оу коемъ се селе нагѣ татѣ или гоусарѣ, този село да се распѣ, а гоусарѣ да се вѣвѣси стрѣмоглавѣ, а татѣ да се вѣлѣпи).¹⁵ According to article 169, "if there be found a goldsmith outside the towns and market-towns of my Empire in any village, that village shall be scattered and the goldsmith branded" (Аще ли се вѣрѣте златарѣ вѣвѣнѣ градовѣ и трѣгове царства ми оу коемъ селѣ, да се този село распѣ, и златарѣ иждеже).¹⁶ It is clear that the village was not liable for the same crimes as culprits (thief, brigand and goldsmith). The responsibility of the village came from the fact that its authorities did not succeed to stop those guilty acts. Towns had the same liabilities: "and if there be a goldsmith in a town who coins dinars secretly, he shall be branded and the town shall pay such a fine as the Tsar says" (Ако се вѣрѣте златарѣ ѣ градѣ ковѣ динаре таино, да се златарѣ иждеже, и градѣ да плати глобоу што рече царѣ).¹⁷

12 Burr, "The Code of Stephan Dušan", p. 518; Novaković, *Zakonik*, p. 85; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

13 Burr, "The Code of Stephan Dušan", p. 530; Novaković, *Zakonik*, p. 124; *Zakonik cara Stefana Dušana*, vol. III, pp. 144–146.

14 Burr, "The Code of Stephan Dušan", p. 539; Novaković, *Zakonik*, p. 146; *Zakonik cara Stefana Dušana*, vol. III, p. 278.

15 Burr, "The Code of Stephan Dušan", p. 526; Novaković, *Zakonik*, p. 112; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

16 Burr, "The Code of Stephan Dušan", p. 532; Novaković, *Zakonik*, p. 133; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

17 Burr, "The Code of Stephan Dušan", p. 532; Novaković, *Zakonik*, p. 133; *Zakonik cara Stefana Dušana*, vol. I, p. 202. The second half of article 169 occurs only in the Athos group of texts, but we may accept it as Novaković does.

As every village was responsible for crimes on its territory, the Code also provided the principle of collective liability for the neighbourhood—*okolina*. The neighbourhood (*okolina*) does not appear to have any precise significance, and it could mean town land that is around the city or the surrounding district. Similar to article 99, article 100 provides: “And if anyone outside a village burn a threshing-floor or hay, let the neighbourhood pay or hand over the burner” (Ако ли кто оужеже изъвьнь села гѣмно или сено, да плати вколина волю да да пожеж’ць).¹⁸ According to article 58, “if any lord who owns one village in a district or among districts should die and any damage be done to that village by fire or other cause, then shall the whole district pay for that damage” (Кто ли оумрѣ а има єдино село оу жѣпе или мегю жоупами, цю се зло ѣчини томѣзи селѣ пожегом или инимъ чимъ любо, вѣсоу тоузи злобѣ да плати вколина).¹⁹ Article 126 says: “If there be robbery or theft on urban land around a town, let the neighbourhood pay for it all” (Градца земля цю є вколо града цю се на ниви гоуси или оукрадѣ, да плати тоѣи вѣсе вколина).²⁰ Concerning the unpopulated hills (Ѡбрѣдѣ поустьѣ), article 158 orders:

If there be an unpopulated hill between two counties, the neighbouring villages which are around the hill shall keep the watch. If they fail to keep watch, whatsoever happen on that hill in the wilderness by way of damage or robbery or theft or any crime, then shall those neighbouring villages pay, to whom it has been ordered to keep the watch.

Ако є брѣдо поустьо мѣгю жоупами, села вкол’ниа коѣа сѣ вколо тогази брѣда, да блюдѣ стражѣ. ако ли не оуз’блюдѣ стражѣ, цю се оучини оу том’зи брѣдѣ, оу пѣстоши чѣта, или гоусѣ, или крагѣ, или кое зло, да платѣю села конимъ єсть речень блюсти поустьѣ.²¹

18 Burr, “The Code of Stephan Dušan”, p. 217; Novaković, *Zakonik*, p. 77; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

19 Burr, “The Code of Stephan Dušan”, p. 209; Novaković, *Zakonik*, p. 49; *Zakonik cara Stefana Dušana*, vol. III, p. 114. “Estates were often scattered, and an owner may often have held villages in various and remote districts, isolated from his main property, surrounded by other owners. Such a village on the death of the owner would be exposed to the danger of looting by neighbours. The application of the general principle of collective responsibility was the surest means of protecting, in those times, the quiet succession of the next owner and the inhabitants of the village.” Burr, p. 209, comment on article 58.

20 Burr, “The Code of Stephan Dušan”, p. 522; Novaković, *Zakonik*, p. 97; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

21 Burr, “The Code of Stephan Dušan”, p. 530; Novaković, *Zakonik*, p. 124; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

According to article 191, “if a brigand steal the Tsar’s swine, let the neighbourhood pay” (И ако гѣсаръ оукраде свинне цареве, да плати околина).²²

However, in some cases it was provided that the King personally repair the damage caused to Ragusan merchants, if the village did not pay for it (Ако ли село не плати, да плати кралевство ми).²³ A master has to pay a fine for the crime of bloodshed (*крн*, *кръвь*), done by his slave, or give the slave to the victim (Ако ли кръвь љчини дѣтникъ, да га пода господарь; ако ли га не пода, да да плати господарь).²⁴

Under the influence of Byzantine law the principle of individual liability penetrated Serbian law. For example, in Saint George’s charter (1300) we read: “*Vražda* [a fine for murder] is not to be taken from the town or from the village, only from a murderer who committed a crime, and by court action” (Вражда да се не оузима или љ градоу или оу селоу разѣт на љбини кто ю оучини и то соудомь).²⁵ It is clear that a new rule of individual liability was adopted in Saint George’s charter, as according to the old customary law *vražda* was requested either from the town or from the village. There is a similar provision in Saint Archangel’s charter (1348), which says “and if it was found *vražda* on church’s villager” (И ако се обрѣте на црковномь чловекоу вражда),²⁶ meaning that *vražda* would be taken only from the killer (church’s villager). However, it is disputable whether the rules of individual liability were applied only on the territories conquered from Byzantium (so-called “Greek Lands”) or on “Serbian Lands” as well.²⁷

2 The Concept of the Guilt

Guilt as a quality which imparts criminality to a motive or act, and renders the person amenable to punishment by the law, was not required in the oldest Serbian law. The crime of murder was avenged by blood feud, i.e. avenging the killing of kin on the person who killed him, or on his family. Lower offences

22 Burr, “The Code of Stephan Dušan”, p. 537; Novaković, *Zakonik*, p. 144; *Zakonik cara Stefana Dušana*, vol. III, p. 274.

23 King Milutin’s treaty with Dubrovnik (14 September 1302), ed. Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

24 Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

25 Ibid., p. 326.

26 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 112.

27 According to Taranovski, *Istorija*, vol. II, p. 28 (377), under the rule of Tsar Dušan, the principle of individual liability prevailed even on the old Serbian territory (so-called “Serbian Lands”, contrary to “Greek Lands”).

(misdemeanours) were punishable by fine. However, there was no distinction between culprits who had committed their crimes with intention (direct or oblique), recklessly or accidentally. All of them were subjected either to the blood feud or having to pay a fine. But, under the influence of Byzantine and canon law, especially with the translation of the *Procheiron*, Serbian mediaeval law differentiated between intention (εἰδῶς, ἐκουσίως, вѣдыи, волиєю), recklessness (ἀκουσίως, ἀπειρία ἢ ῥαθυμία, неволиєю, невѣждыстевомь или небреженіємь) and simple accident (ἀπὸ τύχης, по прилогѣ).²⁸

3 *Mens Rea*

Mens rea (a guilty mind; a guilty or wrongful purpose; a criminal intent) as an element of criminal responsibility refers to the guilty mind for criminal liability. The types of *mens rea* are intention and recklessness. Intention is the most culpable form of *mens rea*. This is because it is more blameworthy to cause harm deliberately (intention) than it is to do so carelessly (recklessness). Recklessness is a less culpable form of *mens rea* based upon unjustified risk-taking.²⁹

The *Syntagma* of Matheas Blastares has no definition of *mens rea* and its types, but in Chapter Φ-5, speaking on homicide, there is the title “On intentional and reckless homicides” (Περὶ φόνων ἐκουσίων καὶ ἀκουσίων, Ο οὐβῖνστ-вѣхъ волныхъ и неволныхъ).³⁰ At the beginning we find the 65th Canon of Holy Apostles, the fourth canon of Gregory of Nyssa and several rules of Basil of Caesarea. According to Gregory of Nyssa, intentional homicide is defined as premeditated and deliberate. Reckless homicide could be recognized when someone who intends to do something else, carelessly commit an offence (καὶ ἐκούσιος μὲν ἐστὶ φόνος, ὁ ἐκ παρασκευῆς τετολμημένος ... Οἱ δὲ ἀκούσιοι φόνοι, φανερά ἔχουσι τὰ γνωρίσματα, ὅταν τις πρὸς ἕτερόν τι τὴν σπουδὴν ἔχων, ἐξ ἀποτυχίας τῶν ἀνήκεστων τι δρᾷ, И волное оубо есть оубῖнство еже отъ състроениѧ надръзнуотіе ... Неволаа оубῖнства іавлен’на имоутъ познаніѧ, негда кто къ иномоу чесоמוу тыштаніе имыи, отъ погрѣшеніѧ не хотештее что съдѣеть).³¹ At the end of the chapter we find several provisions on homicide, taken from the *Basilika* and speaking of reckless homicides.³²

28 *Procheiron* XXXIX, 5, 18, 25, 75, 76, 79, 86, ed. Zepos, vol. II, pp. 216, 218, 226, 227; ed. Dučić, pp. 397, 399, 411, 412, 413; ed. Petrović, pp. 322a, 322b, 323a, 326b, 327a, 327b.

29 Finch and Fafinski, *Criminal Law*, pp. 32, 36.

30 Ed. Ralles and Potles, p. 485; ed. Novaković, p. 513.

31 Ed. Ralles and Potles, p. 485; ed. Novaković, pp. 513, 514.

32 Ed. Ralles and Potles, pp. 493–494; ed. Novaković, pp. 522–523.

Byzantine law has no strict definition of intention, but it uses two terms to designate it: εἰδώς and ἐκούσιος (вѣдѣи and волею in Serbian translation). Εἰδώς means that for the existence of intention, a guilty mind was sufficient. However, much more in use is the expression ἐκούσιος, meaning will, purpose, design. For example, for premeditated murder the mental purpose, the formed intent to take human life, is needed. Intention does not exist if the perpetrator does not wish for the consequence of his act. According to the *Syntagma* of Math-eas Blastares, “a person who killed someone, and wanted only to injure them, shall be not punished as a murderer” (καὶ ὁ φονεύσας, εἰ μόνον ἠθέλησε πλῆξαι, οὐ τιμωρεῖται ὡς φονεὺς, ἢ οὐβίβη, ἀλλ’ ὅτε τὸν ἐκώχλησε οὐδ’ ἀρῆναι, ἢ τομὴν ἐστὶν ἰακοῦ οὐβίβη).³³

Dušan’s Law Code has no strict definition of intention either, but it has adopted a concept of Byzantine law. Several different terms were used to designate intention. Article 101 of the Athos manuscript, speaking on violence (Ὁ παεζατ), says that the penalty shall be “as set forth in the Law Book of the Holy Fathers ... as for the intentional murderer” (да прѣимѣть казнь како пише љ закон’никоу светѣхъ вѣтъць ... да мочит’ се љко и волныи оубица).³⁴ Two articles (76 and 87) mention crimes commit *nahvalicom* (нахвалицимъ), i.e. knowingly, intentionally.³⁵ The expression is known from the translation of Matheas Blastares’ *Syntagma*.³⁶ Articles 57 and 99 use another term, taken from Byzantine law: *pizmom* or *po pizme* (пизмомъ, по пизмѣ, from the Greek word πείσμα, πῖσμα),³⁷ meaning “by rancour”.³⁸ At the end of article 152, speaking on juries, we read:

33 Ed. Ralles and Potles, pp. 493–494; ed. Novaković, p. 522.

34 Burr, “The Code of Stephan Dušan”, p. 516; Novaković, *Zakonik*, pp. 77–78; *Zakonik cara Stefana Dušana*, vol. I, p. 186. In the *Syntagma* of Matheas Blastares (Ф-8) we read that in the event of a death ensuing as a result of an armed attack, if the guilty party were noble, his estate was forfeited, and if a commoner, he was beheaded and his body thrown to wild beasts. Ed. Ralles and Potles, p. 493; ed. Novaković, p. 523.

35 Karadžić, *Srpski Rječnik*, p. 379, translated the term *nahvalicom* (*nàvalicé*) as “mit Fleiß, de industria”.

36 Ed. Novaković, pp. 311, 361, 485.

37 Charles Du Cange in his *Glossarium ad Scriptores Mediae et Infimiae Graecitatis* (Lyon 1688), vol. I, p. 1141, explained the Greek word *pizma* with the following Latin expressions: *indignatio, odium, pertinacia, perfidia*.

38 The same expression could be found in the Ragusan’s letter to Despot Stefan Lazarević from 15 June 1417. The Ragusans (Dubrovčani) complained of Duke Peter who had tied their merchants and sized their property “either at the urging of an evil person or by rancour” (тер или по наговорѣ зла чловека или по кови пизми свеа теи наше трговце и иманье имъ веде). Edited by Mladenović, *Povelje i pisma despota Stefana*, pp. 68–69.

The word *pizma* has survived in modern Serbian, but it is rarely in use. According to Karadžić, *Srpski Rječnik*, p. 499, *pizma* is *die Rache-feindschaft, inimicitia*; *pizmotor* is translated as *der Rachgierige, ulciscendi cupidus*; the verb *pizmiti se* = *der Rache nachgeben*,

“And on a jury there may be neither kinsman nor enemy” (и да нѣсть оу поротѣ родима, ни пизменѣника).³⁹ The word translated as “enemy” is *pizmenik* (*pizmotor* in the manuscript of Athos and *pizmatar* in Studenitz text), from Greek πεισμάταρης = *pertinax*, *pervicax*, *perfidus*.⁴⁰

Other articles of the Code do not contain any mention of intention.

The law on recklessness was subject to change over the years as courts fluctuated between a subjective and objective approach. The distinction between *culpa lata*, *culpa levis* and *culpa levissima*, known from Roman law, was not accepted in Byzantine legal miscellanies. For reckless crimes, the *Syntagma* of Matheas Blastares uses the general term ἀκουσίος (неволею). In some cases, the *Syntagma* says that a culprit has committed a criminal act κατὰ ραθυμίαν (по небреженіи, *ex neglegentia*). For example, if someone sets a house or wheat-stack on fire intentionally, he shall be at first whipped and then burned (‘Ο οἰκίαν ἢ σωρὸν σίτου καύσας ἐν εἰδήσει, τυφθεὶς πρότερον πυρίκαυστος γίνεται, Ἰζε ἡραμίνου ἢ στογῆ π’σπενιце пожегъ въ вѣдѣни, виень бывъ прѣвѣе, о’ннемъ съжижаеѣ се). “But, if that [arson] happened from recklessness or inexperience of the burner ... he shall be condemned for indifference and negligence” (καὶ εἰ μὲν κατὰ ραθυμίαν ἢ ἀπειρίαν τοῦ ἀνάψαντος τὸ πῦρ τοῦτο γέγονεν ... ὡς ἀμελήσας ὁ τοιοῦτος καὶ ραθυμήσας καταδικάζεται, ἢ αἰσθε οὐβο по небреженіи ἢ неискоуся—ствѣ въспалив’шаго огнь се быеѣ ... ἰαко небрѣгъ сицевы и не радивъ ооуждаеѣ се). “A fire that broke out by accident shall be excused” (‘Ο κατὰ τύχην γενόμενος ἐμπρησμός συγγινώσκεται, По прилог’гаю быв’шиє запалиєніє праштаеѣ се).⁴¹ “A person who has killed someone from negligence or from recklessness shall be punished with five years of exile. Who has killed unintentionally shall be pardoned” (ἐπὶ δὲ τοῦ κατὰ βλακειάν ἢ ἀμέλειαν φονεύσαντος, πενταετῆς ἐξορία· ἐπὶ δὲ τοῦ ἀκουσίου, συγγνώμη δέδοται, По несъблюденію же и небреженію оубивіи, петолѣтное подіемляеѣ затоуєніє; неволею оубившомоу проштєніє даеѣ се).⁴²

exsequi quem; the adjective *pizmen* = *einem auffällig, infensus*. Mažuranić, *Prinosi*, p. 925, explains *pizma* with the Latin words *odium*, *inimicitiae*, *dolus*. In Morton Benson’s modern *Serbocroatian–English Dictionary* (with the collaboration of Biljana Šljivić-Šimšić) (Belgrade 1993), p. 405, *pizma* is translated as *spite*, *hatred*. Željko Bujas’ *Croatian–English Dictionary* (Zagreb 2005), does not contain this word.

39 Burr, “The Code of Stephan Dušan”, p. 527; Novaković, *Zakonik*, p. 119; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

40 Du Cange, vol. I, p. 1141.

41 Ed. Ralles and Potles, p. 249; ed. Novaković, p. 262. Cf. *Procheiron* xxxix, 75, ed. Zepos, vol. II, p. 226.

42 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523. The Greek original says that the punishment is five years of exile, while the Serbian text speaks of five years of prison. In our translation we accepted the Greek text, because imprisonment as a penalty did not exist in Byzantine law.

"In all criminal offences we have to examine whether someone has committed a crime intentionally or unintentionally, and that way prescribe either a penalty according to the law or a milder punishment" (Ἐν πᾶσι τοῖς ἐγκλήμασι δεῖ ζητεῖν, εἰ ἐκ προνοίας ἢ κατὰ τύχην ἤμαρτέ τις· καὶ οὕτως ἢ κατὰ νόμον, ἢ πραοτέραν τὴν τιμωρίαν ἐπιφέρειν, Въ всѣхъ сѣгъшеніихъ подобаетъ искати аште отъ промысла или по слоугаю сѣгъвши кто, и сице или по законуу или кротчанише томленіе наносити).⁴³

Dušan's Law Code in several articles differentiates between crimes committed intentionally and recklessly. Article 76, speaking of straying (Ω ποπашι), says that *popaša* (straying) could be done "recklessly" (грѣхомъ) and "knowingly" (нахвалицомъ).⁴⁴ For recklessness, the Code uses the term *greh* (грѣхъ, ἁμαρτία), literally meaning sin, breaking of God's laws, but behaviour that is against the principles of morality, as well. The expression *greh* (sin) undoubtedly came into Serbian mediaeval law under the influence of ecclesiastical ideas, and it is present in the Saint Stephen's and Dečani charters, which provide a case where a monastery was destroyed by fire due to someone's recklessness (И ако по грѣхоу погорни манастирь; ... и ако се по нѣкоємъ грѣхоу нанесе погорѣти манастирю).⁴⁵ According to article 87 "where there occurs homicide without intention and violence, the fine shall be 300 perpers. But if a man kill intentionally, both his hands shall be cut off" (Кто нѣсть дошълъ нахвалицомъ по силѣ терѣ ѣ оучинилъ оубѣство, да плати, т̃, перьперь; ако ли боудѣ пришълъ нахвалицомъ, да моу се вѣтъ роуцѣ вѣтѣкѣ).⁴⁶ However, in two manuscripts from the 17th century (Ravanitza and Sofia transcripts), the words *kto nest došal nahvalicom po sile* ("without intention and violence") and *nahvalicom* ("intentionally") were replaced with *не хотѣше*, *нехотѣнемъ* and *хотениемъ*, *хотѣнемъ*.⁴⁷ The significance is the same ("with" and "without intention"), but the expressions from the Ravanitza and Sofia transcripts are closer to the idea of recklessness expressed in the *Syntagma* of Matheas Blastares.⁴⁸

43 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523.

44 M. Burr translated the expression *grehom* as *in error* ("The Code of Stephan Dušan", p. 212). Đ. Krstić did the same in his translation of Bistritza transcript (*Zakonik cara Stefana Dušana*, vol. II, p. 246). In my opinion *recklessly* would be better, because it is more in accordance with legal terminology.

45 Mošin, Ćirković, and Sindik, *Zbornik*, p. 464; *Dečanske hrisovulje*, ed. Ivić and Grković, p. 134. See R. Popović and S. Šarkiċ, "Greh", in *LSSV*, p. 133.

46 Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 68; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

47 Novaković, *Zakonik*, p. 68; *Zakonik cara Stefana Dušana*, vol. III, pp. 316 and 378.

48 See N. Kršljanin, "Vinost u Dušanovom zakoniku" [*Mens rea* in Dušan's Law Code], in *НОМОФУΛΛΞ, Collection of Papers in Honor of Srđan Šarkiċ*, ed. Tamara Ilić and Marko Božić (Belgrade 2020), pp. 269–282.

4 Mental Capacity or Competence

In some cases Byzantine law pays special attention to mental state, i.e. capacity or condition of one's mind in terms of ability to do or not do a criminal act. According to the *Syntagma* of Matheas Blastares, "neither a child, i.e. seven-year-old boy, nor lunatic, if they kill someone, shall be responsible, according to the law of murder" (Οὔτε ἰνφανς, τουτέστιν ὁ ἑπταετής, οὔτε ὁ μαινόμενος, φονεύων ὑπόκειται τῷ περὶ ἀνδροφόνων νόμῳ, Ни же ин'фасъ, еже есть седмолѣтныи, ни же неистови се оубиваеи подлежаитъ иже о могуеубиствѣ законоу).⁴⁹ So, only minority and insanity were considered as mental incompetency for crime of murder. The provision was known in Serbia with a translation of the *Procheiron*.⁵⁰ However, only *infans* (ἰνφανς, ин'фасъ), a child under the age of seven, was mentioned as a minor. On young persons between 7 and 16 years (ἄνηβοι, младѣи) and their responsibility for murder, the Byzantine legal miscellanies do not speak.

The Law Code of Stefan Dušan does not contain provisions on mental capacity. Article 166, speaking of drunkards, does not excuse a drunken man of responsibility if he strikes anyone or cuts him or wounds him.⁵¹ According to the Code, such criminal acts deserved very severe punishment.⁵²

5 Accomplices

Anyone who takes part with another in a commission of a crime is called an accomplice. Byzantine criminal law knows for accessorial liability and makes a clear difference between: a) an abettor (ὁ ἐντειλάμενός)—one who commands, advises, instigates, or encourages another to commit a crime; b) a participator (ὁ σύμμαχος)—one who contributes to or aids in the commission of a crime by some act, deed, word, or gesture; c) an aider (ὁ συνυπουργῶν)—one who advises, counsels, procures, or encourages another to commit a crime,

49 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523.

50 *Procheiron* XXXIX, 80, ed. Zepos, vol. II, p. 226: Οὔτε infans, τουτέστιν ἑπταετής, οὔτε μαινόμενος φονεύων ὑπόκειται θανάτῳ. Serbian translation, ed. Dučić, p. 412: СЕДЬМЫ ЛѢТЪ УПРΟΥЕ ИЛИ БЕСЬНЫИ, АЦЕ ОУБИЕЪТЪ КОГО НЕПОВИНЬНЪ ЕСТЬ СЪМРЪТН.

51 The Law Code of Stefan Dušan expresses the idea of so-called *actio libera in causa* (lit. "action free in its cause"), i.e. a legal principle which says that a person who voluntarily and deliberately gets drunk or causes mental illness in order to commit a crime may under certain circumstances be held liable for that crime even though at the time he commits the prohibited conduct he may be blind-drunk and acting involuntarily.

52 See below, explication of article 166.

Although Matheas Blastares took the provisions on criminal law from the *Procheiron*, he used different terms for accomplices. For example, Chapter Φ-8 says: “He who ordered someone to kill shall be sentenced as a murderer” (Ὁ ἐντειλάμενός τινι φονεῦσαι, ὡς φονεὺς κρίνεται, Ζαποβѣдавѣи комоу оубити, тако оубѣица оудитѣ се).⁵⁵ Chapter Α-13, treating the crime of abduction, uses for aiders the expression сѣдѣствовавѣи (συνεργήσαντες).⁵⁶ The long Chapter Α-2, speaking on different types of heresies, says that Maximus the Cynic (Greek Μάξιμος ὁ Κυνικός, Latin *Maximus Cynicus*)⁵⁷ “had a participator” (ἔχων καὶ τινα συνεργόν, имѣе нѣкогого съспосѣшника)⁵⁸ in committing a crime.⁵⁹ An accessory after the fact was called ὁ συνειδώς, сѣвѣстѣникъ. Chapter Κ-23, speaking on brigands (Περὶ ληστῶν, О разбоиницихъ) orders: “If someone intentionally takes the stolen object, he shall be accomplice to a perpetrator and shall be punished

54 Ed. Dučić, pp. 398, 403; ed. Petrović, pp. 322a, 323b–324a. Cf. N. Kršljanin, “Saučesništvo u srednjovekovnom srpskom pravu” [“Accompliceship in Medieval Serbian Law”], in *125 godina od rođenja Aleksandra Vasiljeviča Solovjeva* (Belgrade 2016), pp. 165–181.

56 Ed. Ralles and Potles, p. 103; ed. Novaković, p. 106.

58 Ed. Ralles and Potles, p. 70; ed. Novaković, p. 73.

59 Taking advantage of the sickness of Gregory, and supported by some Egyptian ecclesiastics, sent by Peter II, Patriarch of Alexandria, under whose direction they professed to act, Maximus was ordained, during the night, Patriarch of Constantinople in the place of Gregory, whose election had not been perfectly canonical. The conspirators chose a night when Gregory was confined by illness, burst into the cathedral, and commenced the consecration. They had set Maximus on the archiepiscopal throne. The news quickly spread, and everybody rushed to the church. The magistrates appeared with their officers; Maximus and his consecrators were driven from the cathedral.

like him" (Ὁ ἐν εἰδήσει ὑποδεχόμενος τὸ κλαπέν πρᾶγμα, καὶ ὁ συνειδὼς τῷ ἁμαρτάνοντι, ἐν ἴσῳ αὐτῷ τιμωροῦνται, Иже въ вѣдѣніи подемли оукраден'ногоу вешти, и съвѣст'никъ боудеть сырѣшающагомоу, въ рав'но томоу томить се).⁶⁰ However, the word σύμμαχος (съпосовникъ in Serbian translation), meaning in legal terminology a participant—one who contributes or aids in the commission of a crime, was used in Matheas Blastares' *Syntagma* to mean an ally, fellow-fighter. In the Preface (Προθεωρίς),⁶¹ it was said that Gregory of Nyssa was an ally of his brother Basil of Caesarea (Τούτῳ καὶ ὁ ἀδελφὸς Γρηγόριος σύμμαχος ἦν, Семоу и братъ Григориѣ съпосовникъ бѣ).⁶²

Dušan's Law Code has no precise definition for accessorial liability, but it contains several terms to designate accomplices. Article 132, speaking of booty, uses the terms провадѣчѣа (receiver)⁶³ and съвѣстникъ (abettor).⁶⁴ Special punishment was provided for an abettor in article 69, which forbade commoners' councils: "let the leaders be singed" (и да се ѡсмаѣде провадѣчѣе).⁶⁵ An accessory after the fact was mentioned by article 10, regarding heretics: "and whosoever harbours him [heretic], he too shall be branded" (кто ли га имѣ таити, и тѣзы да се жеже).⁶⁶ The case of aiders was regulated by article 131: "In the army there shall be no brawling. If two quarrel let them fight a duel and no other soldier shall help them. And if anyone go to succour or help, let him be flogged" (На воинѣхъ свадѣ да нѣсть; ако ли се свадита два, да се бѣта а инъ никто ѡдъ воинѣхъ да имъ не поможе; ако ли кто потече и поможе на порѣвницѣ, ѡнизи да се

60 Ed. Ralles and Potles, p. 334; ed. Novaković, p. 353.

61 Ed. Ralles and Potles, p. 1. There is no such title in the Serbian translation.

62 Ed. Ralles and Potles, p. 14; ed. Novaković, p. 14.

63 The expression *provodčija*, translated by Malcolm Burr as "receiver" (p. 523), is of Serbian origin. Several charters and treaties with Dubrovnik mention *provod* (entice) as a separate crime (*delictum sui generis*). Article 93 of the Code has a title "Of enticing men" (ѡ провогненіи чловѣка). On that crime we shall speak later.

64 The manuscript of Prizren has, instead of *svetnik* (transcripts of Athos, Baranja and Bistritza), *vestnik* (вѣстникъ), what is obviously an error of the copyist (Novaković, *Zakonik*, pp. 100 and 225; Solovjev, *Zakonodavstvo Stefana Dušana*, p. 461, n. 4; Taranovski, *Istorija*, vol. II, p. 33; Bubalo, *Dušanov zakonik*, p. 198). *Svetnik* comes from the verb *sveštati* se, meaning to arrange, to agree, to take counsel with. The term was taken from the *Syntagma* of Matheas Blastares (see above). The same expressions for receiver and abettor can be found in the verdict for the crime of larceny, promulgated by the tribunal from the city of Srebrenica, almost after 100 years (10 November 1457), where we read: ни свѣстники, ни частники, ни провадчыа не соу краге. Edited by Solovjev, *Odabrani spomenici*, p. 219.

65 *Zakonik cara Stefana Dušana*, vol. II, p. 246; vol. III, p. 118.

66 Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 14; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

бѣѣ).⁶⁷ One more term for accomplice is *podvod* (ПОДВОДЪ), but it can only be found in the titles of transcripts from Athos and Bistritza (Љ ПОДВОДЪ).⁶⁸

Neither the *Syntagma* of Matheas Blastares nor the Law Code of Stefan Dušan speak on attempt—an intent to commit a crime combined with an act falling short of the thing intended.

67 Burr, “The Code of Stephan Dušan”, pp. 522–523; Novaković, *Zakonik*, p. 99; *Zakonik cara Stefana Dušana*, vol. III, p. 136.

68 Novaković, *Zakonik*, p. 135; *Zakonik cara Stefana Dušana*, vol. I, p. 204; vol. II, p. 214. Literally the word means “escort”, but the article speaks on a lord who brings with him (in his escort) a brigand to the Tsar’s Court.

Punishment

Punishment is any fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offence committed by him, or for his omission of a duty enjoined by law.¹

The Serbian legal sources frequently use the word *nakazanije* (НАКАЗАНИЕ) for punishment,² although Dušan's Law Code mentions once the term *kazn* (КАЗНЬ)³ and once *osuždenije* (УСОУЖДЕНИЕ).⁴ The verb “to punish” was used in the form *nakazati* (НАКАЗАТИ) or *nakazivati* (НАКАЗИВАТИ),⁵ and it penetrated into temporal legislation from Slavonic translations of the Holy Scriptures. For the first time the term was mentioned in the *Typicon* of Hilandar monastery, composed by Saint Sabba (1199), in two different meanings: “educated, learned” (НАКАЗАТЬ, as a translation of the Greek word ἐμπειρος)⁶ and “to punish” (НАКАЗОВАТИ).⁷ However, Dušan's Law Code more often uses the abbreviated formula *da se kaže* (ДА СЕ КАЖЕ = “let him be punished”), instead of *da se nakaže* (ДА СЕ НАКАЖЕ).⁸

The expressions *nakazanije* (as a translation of the Greek word εἰσήγησις = suggestion) and *kazn* (as a translation of the Greek words ποινή and τιμωρία = punishment, penalty) are used in the translation of the *Syntagma* of Matheas Blastares.⁹ However, the Serbian translator used several different terms for punishment: ΤΟΜΑΙΕΝΙΕ (ποινή, τιμωρία), ΙΣΤΕΖΑΝΙΕ (ἐξέτασις), ΜΟΥΚΑ (κόλασις) and ΓΛΟΒΑ (ποινή, meaning *fine*). And for the verb “to punish”, he used ΟΤΜΥЦΙΑТИ (ἐχδιχεῖν) as well.¹⁰

Articles 11 and 19 of Dušan's Law Code use the formula *da ih vedeysa* (ДА ИХ ВЪДЕВЪСА = “let them punish”) or *da se pedepsa* (ДА СЕ ПЕДЕПЪСА = “let him be

1 *Black's Law Dictionary*, p. 1234.

2 The word in modern Serbian is *kazna* (казна).

3 Article 100 of the manuscript of Athos. Novaković, *Zakonik*, p. 78; *Zakonik cara Stefana Dušana*, vol. I, p. 186. Cf. Mažuranić, *Prinosi*, pp. 492–498.

4 Article 129. Novaković, *Zakonik*, p. 98; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

5 In modern Serbian we use the verb *kazniti* (казнити).

6 Ed. Ćorović, p. 208.

7 Ed. Ćorović, pp. 114, 115; ed. Jovanović, pp. 94, 95.

8 Articles 6, 8, 109, 140–142, 144–147, 149, 165, 173, 178.

9 Ed. Ralles and Potles, pp. 9 and 179; ed. Novaković, pp. 9 and 187.

10 Solovjev, *Zakonodavstvo Stefana Dušana*, p. 465.

punished”),¹¹ derived from the Greek verb παιδεύειν = to punish, to educate.¹² The same expression was repeated in Tsar Dušan’s chrysobull confirming the founding of the Episcopacy of Zletovo (1346–1347), where we read: “And if it happened that Despot John Oliver and his descendants did something wrong to me the Tsar or to the Serbian throne, let them be punished according to my holy Imperial will” (аще и поне некои слоучит се деспотоу ѿливероу и сьгрѣшитъ конимъ либо дѣломъ царьствоу ми и столу сръпскому, или по немъ чѣда его такожде сьгрѣшетъ царьствоу ми да се они сами пѣдепсуютъ по изволенію свѣтаго царства ми).¹³ The verb *pedepsati* in the meaning of “punish”, became common in 15th-century documents,¹⁴ as well as the noun *pedepsija* (пѣдепсиѧ) = punishment.¹⁵ Even the Croatian translations of Austrian laws from 18th and the beginning of 19th centuries use the much more Greek word *pedepsija* (or *pedepsa*, *pedipsa*) rather than any other Croatian expression or Italian *kaštiga* (from *castigo*).¹⁶

The right to punish (*ius puniendi*) belonged to the monarch, as is clear from the often repeated formulas *da se kaže*, *da se nakaže* or “to receive a wrath and punishment from me, the King” (да примѣ гнѣвъ и наказаніе ѿт краљевства ми).¹⁷ Under the influence of Byzantine law in mediaeval Serbia the following types of penalties were introduced.

11 Burr, “The Code of Stephan Dušan”, pp. 200 and 202; Novaković, *Zakonik*, pp. 15 and 22; *Zakonik cara Stefana Dušana*, pp. 102 and 104.

12 In Ancient Greek, the verb παιδεύω, παιδεύειν usually means “I educate, to educate” (see *A Greek-English Lexicon*, compiled by H.G. Liddell and R. Scott [Oxford 1976]), but in Byzantine Church terminology it meant “to punish”. For example, in the Greek translation of the Book of Hosea (Ὠσηε) we read (VII, 12): ... καθὼς τὰ πετεῖνα τοῦ οὐρανοῦ κατὰξω αὐτούς, παιδεύσω αὐτούς ἐν τῇ ἀχοῇ τῆς θλίψεως αὐτῶν (“I will put them down like the birds in the sky. When I hear them flocking together, I will punish them”).

13 Edited by S. Mišić, *SSA* 13 (2014), p. 188.

14 For example in the Ragusan’s letter to Despot Stefan Lazarević from 15 June 1417, edited by Mladenović, *Povelje i pisma despota Stefana*, p. 69.

15 For example in the charter of Ivan Crnojević to the Cetinje monastery (4 January 1458), we read: “and to receive the punishment of exile from the monastery as an offender of God and a malicious person” (и да прими пѣдепсию и изгнаніе ѿт монастыра како прѣстоупникъ Божи и злобникъ). Novaković, *Zakonski spomenici*, p. 781.

16 Solovjev, *Zakonodavstvo Stefana Dušana*, p. 467 and note 1. Cf. Mažuranić, *Prinosi*, pp. 490 and 909.

17 Mošin, Ćirković, and Sindik, *Zbornik*, p. 274.

1 Capital Punishment

Capital punishment (punishment by death) was mentioned for the first time in Dušan's Law Code. It is true that King Stefan the First Crowned in *The Life of Saint Simon* wrote that his father Stefan Nemanja has punished Bogomilian heretics by the death penalty (they were burnt in the fire; и вѣыиныхъ иждеже),¹⁸ but as this text is a hagiography, not a legal source, we are not sure whether we can trust it. According to Dušan's Law Code, punishment by death was executed by hanging and burning. It is remarkable that capital punishment was more often pronounced for crimes against property (роуца = brigandage, robbery) than for murder (only for the killing of clerics or closest relatives—father, mother, brother or child). The death sentence is provided for in the Code also in cases of a commoner who rapes the wife of a nobleman.

2 Corporal Punishments

Corporal punishments as any kind of punishment of, or inflicted on, the body in mediaeval Serbia consisted of both hands being cut off (“both his hands shall be cut off”, да мѡу сѣ вѣѣ роуцѣ вѣѣкѣ),¹⁹ combined with the cutting out of the tongue (articles 21, 162) and slitting of the nose (articles 53 and 54). Article 69 provided for the cutting off of the ears, and according to article 166 one eye could be removed (да мѡу сѣ око измѣ). According to article 145, “a thief shall be blinded” (а татѣ да сѣ вѣлѣпи), and a brigand and thief, “who is taken in the act ... shall be blinded and hanged” (роуцарѣ и татѣ вѣлѣчнѣи ... да сѣ вѣлѣпе и вѣѣсе).²⁰

All those punishments that had mutilation as a consequence came into Dušan's legislation under the influence of Byzantine law, starting with the *Ecloga*. Though the *Ecloga* continued to be based on Roman law, Leo III the Isaurian revised it in the spirit “of greater humanity” (ἐπιδιόρθωσις εἰς τὸ φιλελεῦς)²¹ and on the basis of Christian principles. In criminal law the application of capital punishment was restricted to cases involving treason, desertion from the military, and certain types of homicide, heresy, and slander. The code eliminated the death penalty for many crimes previously considered

18 Ed. Jovanović, p. 36. Cf. *Ecloga* XVII, 52, ed. Burgmann, p. 242: Οἱ μανιχαῖοι καὶ μοντανοὶ ξίφει τιμωρεῖσθωσαν.

19 Articles 87, 97 and 131 of the Code. Article 166 speaks of the cutting off of one hand.

20 Article 149.

21 Ed. Burgmann, p. 160.

capital offences, often substituting mutilation. Those ideas were known in Serbia from the translation of the *Syntagma* of Matheas Blastares. In Chapter M-9, Matheas Blastares says that the Emperor,²² who established a revision of the old laws, did not apply any penalty that existed in the *Digests* and *Institutes*: he did not order decapitation, stoning, burning, hanging or suffocation. If he ordered sometimes the application of some cruel punishment, it was not the death penalty, but exile or imprisonment, or blinding, or cutting off of the hand, “because the stream of time can give time to a culprit to transform himself and to repent for his crimes” (ἡ δύναμις ἂν καὶ ἐπιστ’ οφῆς καιρὸν παρασχεῖν τῷ τιμωρομένῳ, τῇ τοῦ χρόνου παρατάσει, καὶ τῶν ἐπταισμένων ματάνοιαν, еже възмогуѣть оубо и обраштенїа врѣме подати томимому врѣмен’нымъ протеженїемъ и сыгрѣшениемъ покаяниѣ).²³

Though mutilation as a consequence of corporal punishment was applied in Serbia only in Dušan’s legislation, we have a testimony that it had been used earlier. King Stefan the First Crowned in *The Life of Saint Simon* wrote that his father ordered the cutting out of the tongue to the Bogomilian teacher and superior (оучителю же и начел’нику ихъ языкъ оу҃рѣза оу҃ грьтани его).²⁴ However we are not sure whether we can trust this isolated information.

As corporal punishment we can mention also branding on the face, singeing and flogging. Branding on the face was provided by article 10 of the Code for “any heretic²⁵ who be found living among Christians, let him be branded on the face and driven forth” (И кто се убрѣте ерети҃гъ, живѣ въ христїанѣхъ, да се жеже по убрѣзѣ и да се проже҃не).²⁶ Singeing (осмоудити, *comburare capillos de capite et barbam*, burning of the hair and beard) was prescribed for a commoner who insulted a lord (article 55), for the leaders of commoners’ councils (article 69) and for a serf who flees anywhere from his lord (article 201).

Before the promulgation of Dušan’s Law Code only the Žiča chrysobull mentions flogging as corporal punishment—for a wife who self-willingly abandons her husband (see Chapter 15, section 3, speaking on divorce). The Code prescribed flogging in five cases: 1) for a monk who takes a bribe (article 24, but only in the Rakovac text, which could be a late emendation); 2) for a lesser lord who insults a greater (article 50); 3) for a commoner who utters heretical words

22 The text does not mention the name of the Emperor, but it must be Basil I.

23 Ed. Ralles and Potles, p. 371; ed. Novaković, p. 391.

24 Ed. Jovanović, p. 36.

25 The heretics mentioned in article 10 were Bogomils, the most numerous heretical sect in the Balkans.

26 Burr, “The Code of Stephan Dušan”, p. 200; Novaković, *Zakonik*, p. 14; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

(article 85); 4) for a soldier who succours or helps someone fighting a duel (article 131); and 5) for a drunken man who molests or insults anyone (article 166). The number of strokes (100) was provided only for the drunken man. In other cases the Code says indefinitely “let him be flogged with sticks” (ДА СЕ БІЄ СТАПІН).²⁷

3 Pecuniary Punishments or Fines

Pecuniary punishments or fines were promulgated in cattle and as a penalty in money. In charters from the 13th century, pecuniary punishments in cattle prevailed, while in the 14th century, under the influence of Byzantine law, almost for all offences, persons were sentenced to pay a penalty in money. Dušan's Law Code contains only three cases when pecuniary punishments were not in money: 1) from a lord who was summoned and who did not come, six oxen shall be taken (article 56); 2) for straying, done knowingly, the fine shall be six oxen (article 76); 3) a lord has to pay sevenfold for a horse, which died in his land and he has taken keep for the horse (article 200).

The first term used for a fine is *osluha* (ωσλοуχα), and it was mentioned in the Žiča chrysobull.²⁸ The expression refers to “disobedience” to the law (from the verb *poslušati* = to obey, and substantive *posluh* = obedience), but it was used only in ecclesiastical documents. Temporal legislation adopted the word *globa* (ГЛОБА) as a general term for all fines. This is clear from a short fragment of Saint George's chrysobull, where we read: “All fines shall belong to the Church” (ПОНІЄЖЕ БО ВСАКА ГЛОБА ЦРЬКОВНА ІЄСТЬ).²⁹ The passage was followed by a long list of crimes imposing a pecuniary punishment or mulct.

Dušan's Law Code in six articles uses the formula “let him pay sevenfold” (ДА ПЛАТИ СЕМОСЕД'МО), meaning to increase to seven times the amount of fine. First, article 30 orders: “And whosoever shall molest or damage anyone without judgment, let him pay sevenfold” (АКО ЛИ ОУР'ВЪ БЕЗЪ СОУДА, ИЛИ КОМУ ЗАБАВИ, ДА ПЛАТИ СЕМОСЕД'МО). According to article 93: “Whosoever enticeth a neighbour's man into another estate, let him pay sevenfold” (КТО ПРОВОДИ ДРОУЖНАГО

27 See M. Ivanović, “Telesne kazne u srednjovekovnoj srpskoj državi od vremena Nemanjića do pada Despotovine” [“Corporal Punishments in the Medieval Serbian State from the Nemanjić Dynasty to the Fall of Serbian Despotate”], in *NOMOPHILAX*, ed. Ilić and Božić, pp. 283–304.

28 Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

29 Ibid., p. 326.

чЛОВѢКА ОУ ТОУЖДОУ ЗЕМЛЮ, ДА МОУ ГА ДАА САМОСЕД'МАГО). Article 102 prescribes: "There shall not be deposited any caution by any man at any time. And whosoever shall so do, he shall pay sevenfold" (ОУЗДАНІА ДА НѢСТЬ НИКОМЪ НИЦА НИКАК'БА, КТО ЛИ СЕ ПОЗДА ЗА ЦЮ, ДА ПЛАТИ САМОСЕД'МО). There is article 143, providing responsibility of the Warden of the Marches for raids by foreign enemies.³⁰ According to article 187, "if there be one who stay in that village [where the Tsar and Tsaritsa were staying] contrary to the law and the Tsar's command, the elder of the shepherds shall be delivered bound to that village and he shall pay sevenfold the damage done" (АКО ЛИ СЕ КТО ВЕРБЕТЕ И ПРѢЛЕЖИ ОУ ТОМ'ЗИ СЕЛѢ, ПРѢЗ ЗАКОНЪ И ПОВЕЛѢНІЕ ЦАРЕВО, ВН'ЗИ КОИ ІЕ СТАРБИ ПРѢД СТАНОВИ ДА СЕ ДА СВѢЗАНЪ ВНОМЪИ СЕЛѢ, ЦЮ БОУДЕ СТРОВЕНО ВСЕ ДА ПЛАТИ САМОСЕД'МО). Article 200 has already been mentioned.³¹ However, the Code does not spell out the basic amount.

4 Confiscation and Exile

Confiscation as the seizure of private property by the King or Tsar without compensation to the owner, often as a consequence of conviction for crime, in Serbian mediaeval law was often combined with exile—expulsion from the country.

In the first place, confiscation was pronounced for the high treason (невѣра, *nevera*)—acts against the King (Tsar). However, in Serbian legal documents there is no single provision speaking of confiscation as a penalty for high treason, but it seems that it was a strict disposition of customary law. This is clear from some narrative passages of the charters. Saint George's charter, for example, exposes a story of a nobleman Vericha, who committed a crime of high treason, escaping to the Bulgarian *sebastokrator* Kaloyan Sinadin. For this reason, King Milutin gave as a present all Vericha's estate to the church of Saint George (Изневѣри бо се Вериѡа кралевствоу ми и побѣже к себастократору Калояну Синадиноу. Да цю се вербѣта Вериѡево гдѣ люво, дахѣ іе црькви Светаго Гѡургіа).³² The same King, in the charter presented to the monastery of Saint Stephen in Banjska, declared:

30 See Chapter 9, section 4.5.

31 Burr, "The Code of Stephan Dušan", pp. 204, 216, 516, 525, 530, 539; Novaković, *Zakonik*, pp. 29, 73, 79, 110, 143, 144; *Zakonik cara Stefana Dušana*, vol. III, pp. 106, 124, 126, 140, 278; vol. I, p. 206.

32 Mošin, Ćirković, and Sindik, *Zbornik*, p. 323.

Village in Ras Tušimlja, and village in Zeta Hrastije, I found given by my father and my mother and confirmed by my will, to Iritza, not to be taken from him, except in the case of high treason. As he committed a crime of high treason I confiscated all his estate and I donated it to the church of Saint Stephen.

Село оу Расѣ Тоушимля, и оу Зетѣ Храстие, вѣрѣтохъ записано вѣтцемъ ми и материю и съ моимъ х'тѣниемъ Ирици, тако да им'се не оуз'моу развѣ невѣре; да кралевѣствоу ми изневѣрише се. Зато оузъмь ихъ и записахъ цркви Светаго Стефана.³³

For the act of confiscating of property, the Serbian legal sources use several different terms:³⁴ “let all he hath be taken from him” (да моу се вѣсе оузмѣ цю има);³⁵ “to distraint upon” (да се плени);³⁶ and “let it be scattered” (да се распѣ).³⁷

Confiscation was pronounced for the following crimes: stealing in a church (И аще к'то оукраде ч'то въноутрѣ цркви);³⁸ “if any church official takes bribes” (И ако се наиде владал'ць црковны оузмѣ мито);³⁹ “whosoever shall be found to have driven men of the Church into an imperial estate” (кто ли се наиде изгнавъ метохію на мироп'шиноу);⁴⁰ refusal of a judge's envoy or clerk (кто се наиде отбивъ соудина сокал'ника, или пристава);⁴¹ and “whosoever shall insult a judge” (кто се наиде сѣдѣю вѣсрамотивъ).⁴²

Exile (*proscriptio*, *bannitio*) with confiscation was provided in three articles of Dušan's Law Code: 1) for a “half-believer” (Roman-Catholic) who took “a Christian woman” (Greek Orthodox) and refused to be baptized into Christian-

33 Ibid., p. 461.

34 The expression “confiscation” (in Serbian *konfiskacija*, *конфискација*) was not in use in mediaeval law. It is a word of modern legal terminology.

35 Articles 107 and 111.

36 Article 107. The Serbian word used in the text is *da se pleni*. The verb *pleniti* comes from the noun *plen* = prey, booty, spoils, and in modern Serbian it is used for war booty, not for confiscation of property. M. Burr (“The Code of Stephan Dušan”, p. 517) did not understand correctly the expression *da se pleni*, and he translated it as “shall be imprisoned”.

37 Article 111. Cf. Saint Stephen's charter (Mošin, Ćirković, and Sindik, *Zbornik*, p. 465): “let his house be scattered” (да моу се коуца распѣ), and Tsar Dušan's charter to the church of Saint Archangels Michael and Gabriel in Jerusalem from 29 April 1348 (edited by Novaković, *Zakonski spomenici*, p. 708, para. vi): “let it be scattered” (да се распѣ).

38 Saint Stephen's charter. Edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

39 Article 24.

40 Article 34.

41 Article 107.

42 Article 111.

ity (И ако се наиде полѡвѣр'ць, оузьмъ христ'яницѡ ... ако ли се не крѣсти);⁴³ 2) for a heretic "living among Christians" (И ако се вѣрѣте еретикѡ, живѣ въ христ'янѣхъ);⁴⁴ and 3) for a monk who took bribes (Ако ли калогѣрь кон оузме митѣ).⁴⁵

5 Imprisonment

Imprisonment as the act of putting or confining a person in prison (Greek φυλακή or δεσμοτήριο) was rarely used in Serbian mediaeval law. Charters promulgated before Dušan's Law Code mention only one case of imprisonment. In the text of Saint Stephen's charter we read: "Whosoever shall be found to beat up a steward [of the church's manor] has to give six sheep, and a thug shall be put in a dungeon⁴⁶ and cannot be released before three months" (Владѣлаца бив'ше .S. вѣ'ць, и боица да се вѣрже въ тѣм'ницѡу, и да се не поустии прѣжде .Г. мѣсеце).⁴⁷

Dušan's Law Code gives three cases when imprisonment was provided as a penalty: 1) for weddings done "without the blessing and permission of the Church" (безъ благословен'їа и оупрошен'їа цркве), those brides and bridegrooms shall be dissolved and kept in a dungeon until they pay a fine (такѡви да се разлѡчитѣ, и да се вѣсадитѣ въ там'ницѡ донѣдеже глобѡ даѣтѣ);⁴⁸ 2) for "a monk who abandons the habit,⁴⁹ let him be kept in a dungeon until he return again to obedience and let him be punished" (И калогѣрь кон свѣрже расѣ, да се дрѣже оу тѣм'ници, докла се вѣрати оу послѡшан'їе, и да се пѣдеп'са);⁵⁰ and 3) for a drunkard who molests anyone (аце ли п'їанъ задѣре).⁵¹ However, the

43 Article 9.

44 Article 10.

45 Article 24 of the manuscript from Rakovac.

46 The Serbian word is *tamnica* (тамница), i.e. "dark place". In modern Serbian *tamnica* is obsolete, and the word *zatvor* (замвор) = jail, prison, is in use.

47 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

48 Article 3, but only in Sofia's manuscript from the middle of the 17th century. Novaković, *Zakonik*, p. 9; *Zakonik cara Stefana Dušana*, vol. III, p. 360.

49 Расѣ in the original text, from the Greek τὸ ράσον. The rule was taken from the *Basilika* IV, 1, 14, i.e. Justinian's *Novella* CXXIII, 42, entitled ΠΕΡΙ ΕΚΚΛΗΣΙΑΣΤΙΚΩΝ ΔΙΑΦΟΡΩΝ ΚΕΦΑΛΑΙΩΝ. If a monk leaves a monastery and comes back to a secular life (εἰς κοσμικὸν βίον), the State authorities have to retain him and throw him (βάλλεσθαι) again into a monastery.

50 Article 19. Burr, "The Code of Stephan Dušan", p. 202; Novaković, *Zakonik*, p. 22; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

51 Article 166. Burr, "The Code of Stephan Dušan", p. 532; Novaković, *Zakonik*, p. 131; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

Code does not give the precise duration of imprisonment: article 3 says “until they pay a fine” and article 19 “until he return again to obedience”. In the third case (article 166) the Code is more undefined, ordering “he [a drunkard] shall be ... cast into prison, and taken from prison”. From a modern point of view it could be unclear, but in mediaeval customary law maybe a solution existed. We have to remember that the first two cases were under the jurisdiction of an ecclesiastical court, having cognizance mainly in spiritual matters. “A dungeon” mentioned in articles 3 and 19 was a prison belonging to a Church and used for some kind of custodial arrest and temporary detention. Only in the case of the drunkard (article 166) can we speak of prisons as State institutions.

Except the cases where imprisonment (dungeon, jail, prison) was explicitly provided, Dušan's Law Code in several articles for deprivation of freedom uses the formula “let them be bound” (да се свежѧ). First, article 32 orders: “Ecclesiastical persons who administer Church villages and Church lands and drive the Church labourers and shepherds away, those who have driven the men away, let them be bound ... and let the Church keep them until they have restored the men whom they drove away” (Людѣ црковныи, кои дръже црковна села, и земли црковне, а прогнали соут мероп'хѣ црковне, или влахѣ; внизиѣ коино сѧ раз'гнали людѣи, да се свежѧ ... и да их дръжи црква до где скоупе людѣи кое сѧ раз'гнали).⁵² According to article 145, “in whotsoever village a thief or brigand be found ... the headman of the village shall be brought before me the Tsar” (оу коем се селе нагѣ татѣ или гоусарѣ ... а господарѣ села тога да се довѣде свезан кѣ царствоу мѣ).⁵³ Article 187 says that “the elder of the shepherds shall be delivered bound to that village” (вн'зи кои е старѣи прѣдѣ станови, да се да свѣзанѣ вномѣи селѧ), where the Tsar and Tsaritsa were staying.⁵⁴ The second half of article 198 orders: “And if a lord do not pay the tribute in kind [“соце”] at this period [Saint Demetrios' Day and Christmas], let him be bound in the Tsar's court and kept until he pay double” (ако ли сокѣа валстелинѣ не да на те рокове, валстелинѣ тѣ да се свеже на царьскомѣ дворѣ и да се дръжи докле плати двоиномѣ).⁵⁵ However, all quoted articles do not treat imprisonment as a lengthily deprivation of freedom, but rather as a temporary detention (custodial arrest).

52 Burr, “The Code of Stephan Dušan”, p. 204; Novaković, *Zakonik*, p. 30; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

53 Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 112; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

54 Burr, “The Code of Stephan Dušan”, p. 530; Novaković, *Zakonik*, p. 143; *Zakonik cara Stefana Dušana*, vol. I, p. 206.

55 Burr, “The Code of Stephan Dušan”, p. 538; Novaković, *Zakonik*, p. 265; *Zakonik cara Stefana Dušana*, vol. III, p. 278.

Several articles from the Law Code of Stefan Dušan mention a “dungeon”—an underground prison or cell placed in the strongest part of a fortress.⁵⁶ First, article 112 under the title “On escape from a dungeon” (Ѡ оутѣченіи тѣмничномъ)⁵⁷ orders: “If any man escape from a dungeon, so soon as he come to my court, be he my man or a man of the Church or of a lord, forthwith let him be free. And if he escape, whatsoever he leave, let it belong to him from whom he hath escaped” (Кои чловѣкъ оутѣче ис тѣмнице, с чимъ прїидѣ на дворъ царства ми, или кѣтъ чловѣкъ царства ми, или црьковны, или властѣл’скы, с тѣм’зїи да кѣтъ свобод’нь; аще кѣтъ оутѣк’ль оу тогазїи чловѣка цю бѣдѣ вставишь, тѣзїи да има комѣ боудѣ оутѣк’ль).⁵⁸ Article 113, entitled “On prisoners” (Ѡ соужнїе), says: “And any prisoner kept in my court, if he escape to the court of the Patriarch, let him be free, and similarly if to the court of the Tsar, let him be free” (Кои се сѣжынь дрьжїи оу дворѣ царства ми, терѣ оутѣче на дворъ патріар’шь да кѣтъ свобод’нь; и такожде на дворъ царевъ да кѣтъ свободь).⁵⁹ According to article 184 (“Of prefects”, Ѡ кнефалїахъ): “My lords and prefects who hold the towns and market-towns may none of them receive any man for the dungeon without my warrant. And if any such do receive such a man without my command, let him pay me 500 perpers” (Властѣле и кнефалїе царства ми, кои дрьже градовѣ и трьговѣ; никто ѡт ныхъ да не приме чловѣка оу тѣмницѣ безъ кнїге царства ми; аще ли кто кога приме прѣзповѣдь царства ми да плати царствоу ми, ѡ, перьперь).⁶⁰ Finally, article 185, entitled “Of dungeons” (Ѡ тѣмнице), precribes: “In the same way, he who holds my dungeons shall receive no man without my warrant” (Тѣм’жде ѡбразомъ. кто дрьже тѣмнице царства ми, да никога не приме ниїега чловѣка, безъ кнїге повелѣнїа царства ми).⁶¹

The analysis of the abovementioned articles shows that in mediaeval Serbia there existed different types of dungeons: patrimonial dungeons, belonging to the Church or to the noblemen (articles 112 and 113); State dungeons in the

56 The Serbian word is *tamnica* (тамница)—a dark or subterranean prison. In modern Serbian, the word *tamnica* is used only in literary works. In legal terminology, the word *zatvor* = prison, jail (from verb *zatvoriti* = to imprison, to put into prison) is in use.

57 Manuscripts from Athos and Bistritza have the title “On prisoners” (Ѡ сѣжнїе). Novaković, *Zakonik*, p. 86; *Zakonik cara Stefana Dušana*, vol. I, p. 188; vol. II, p. 198.

58 Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, p. 86; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

59 Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, p. 87; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

60 Burr, “The Code of Stephan Dušan”, p. 530; Novaković, *Zakonik*, p. 142; *Zakonik cara Stefana Dušana*, vol. III, p. 154.

61 Burr, “The Code of Stephan Dušan”, p. 530; Novaković, *Zakonik*, p. 142; *Zakonik cara Stefana Dušana*, vol. III, p. 154.

towns (article 184); and the Tsar's dungeons (article 185). However, it is not clear for what types of crimes imprisonment in a dungeon was pronounced.

6 Spiritual Sentences

The spiritual sentences known in Serbian mediaeval law were anathema (ΑΝΑΤΗΜΑ, ΑΝΑΘΕΜΑ, ΑΝΑΤΕΜΑ, from Greek ἀνάθεμα, literally "that which is set aside, accursed")⁶² and excommunication (οὔτλογ·чение, ἀφορισμός, literally "casting out").

Anathema was the highest form of ecclesiastical censure directed at obstinate or unrepentant heretics, normally found at the conclusion of conciliar decrees and canons. Serbian charters often use the formula "let him be damned, let him be cursed" (да њеѡтъ проклеѡтъ) for anyone who violates Church privileges. For example in Saint George's charter we read:

If someone brings an *apokrisiarios*⁶³ into a monastery, let him be damned by Lord God Pantokrator and by the All-undefiled Lady and let him be killed by Saint George and be his adversary here and on the Last Judgment of Christ, and let him pay a tariff of 100 perpers.

Ако ли кто оуведе апокрисара оу манастирь, да њеѡтъ проклеѡтъ ѡт Господа Бога вседържителя и ѡт прѣчистие Богородице, и да га оубие светые Гевргие и да моу ње соупърникъ зде и на страшноу соудници Христовѣ и да плати оу цариноу .Р. перьперѣ).⁶⁴

At the end of the same charter we can find the following sanction:

Whosoever be found, inspired by the Devil, to change any word of this chrysobull ... let him be damned by Lord God Pantokrator and by the Holy Trinity, Father, Son and Holy Spirit, and by the All-undefiled Mother of God ... and by Saint John the Baptist and Forerunner, and Four Saint Evangelists, and Twelve Saint Apostles, and 318 Saint Nicene Fathers, and by all apostles and prophets and martyrs and saints and fasters, and by all Orthotox Tsars and Kings ... and to pay a tariff of 500 perpers.

62 See A. Papadakis, "Anathema", in *ODB*, p. 89, and R. Popović, "Anatema", in *LSSV*, p. 13.

63 Apokrisiarios (ἀποκριτάριος, Latin *responsalis*) in its ecclesiastical sense, the messenger or representative of a bishop or hegoumenos in dealings with higher authorities.

64 Mošin, Ćirković, and Sindik, *Zbornik*, p. 328.

Кто ли се вбреце оухищрениемъ диваолиемъ прѣтворивъ единоу чртоу вт сихъ вишеписанихъ Ѹ семь хрисовоуль ... да естъ проклетъ вт Господа Бога вседържителя и вт Светыне Троице, Ѡтыца и Сына и Светаго Доуха и прѣчистие него матере Богородице ... и светаго Прѣдтече и Кръстителя Івана, и светыхъ .Д.хъ евангелистъ, и вт .ВІ. врьховныхъ апостоль и вт .ТІІ. светыхъ втыць никенскихъ, и вт вѣхъ апостоль и пророкъ и моученикъ и светитель и постникъ, и сихъ правовѣрныхъ царь и краль ... и да плати оу царинуу .Ф. перперъ.⁶⁵

We have to note that spiritual sanction was pronounced together with a payment of fine.

At the end of Saint Stephen's charter we read a similar anathema:

And if someone have impertinence to change by force any word [of this chrysobull] ... let him have as adversary The Most Holy Mother of God, and to be cursed by Saint John Prophet and Forerunner and Baptist, and by the Twelve Apostles, and by 318 Saint Nicene Fathers, and by Saint Protomartyr Stephen, and Saint Simon and Saint Sabba ... and to be damned by me, the sinful King, and to have my anathema.

Аще ли к'то дрз'не посиленемъ потворивъ и единоу чртоу разорити ... и да имаа въ мѣсто помощи соупр'ницоу прѣсветоую Богородицоу, и да приеме проклетие вт светаго Івана пророка и Прѣдтече Кръстителя и вт .ВІ. апостоль и вт .ТІІ. светыхъ втыць иже въ Никен, и вт сего светаго прьвомоученика Стефана, и светаго Симеона и светаго Савы ... и вт мене грѣш'нааго да естъ проклетъ и анаѳема.⁶⁶

Anathema as spiritual sentence is present in article 13 of Dušan's Law Code: "and from now whosoever shall be appointed Metropolitan, bishops or hegoumenos by bribery, let him be accursed, as also he who appointed him" (и вт съда кто се наиде поставивъ по мит'Ѹ митрополита, или епископа, или игоумна, да естъ проклетъ и вн'зи кон га је поставиль).⁶⁷ For anyone who molests a monk, article 30 uses a formula "he shall not be blessed" (да нѣсть благословень).⁶⁸

65 Ibid., p. 329.

66 Ibid., p. 469.

67 Burr, "The Code of Stephan Dušan", p. 201; Novaković, *Zakonik*, p. 17; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

68 Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, p. 29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

Excommunication entailed the exclusion of the transgressor from the community or fellowship of the Church and its sacraments, especially the Eucharist. Dušan's Law Code in articles 4 and 5 prescribes excommunication as spiritual sentence ("let him be separated from the Church", *да се втлоучи вт цркви*).⁶⁹ However, articles 6, 8 and 109 say simply "let him be punished as is written in the Laws of the Holy Fathers" (*да се каже како пише оу законикѣ светыхъ втыць*),⁷⁰ without precise determination of penalty type.

7 Loss of Honour and Disqualification from Holding an Office

Loss of honour (*ἀτιμία*, *infamia*) appears in Justinianic law as a penalty for wrong or unseemly conduct, such as not obeying trade regulations, disgraceful behaviour in the army, misconduct in family relations, and certain criminal offences. Infamy (*Ehrlosigkeit* in German law) as a penalty had a great importance in German mediaeval law, and among Slavonic laws in Poland. It was genetically connected with breach of the peace (*Friedlosigkeit*)—disorderly and dangerous conduct disruptive of public peace. Breach of the peace is a generic term, and includes all violations of public peace or order and acts tending to a disturbance thereof. A violation of public tranquility was usually punished by loss of honour and exile (*bannitio*).

In Serbian mediaeval law we can find only two cases which provided loss of honour. First, article 154 of Dušan's Law Code, entitled "Of jurymen" (*о поротницѣхъ*), runs as follows: "When jurors acquit on oath according to the law, and after acquittal guilt be proved against him whom they have acquitted ... and in future those jurors shall not be believed" (*Кои се поротници кльнѣ и вправѣ вногази по законѣ, и ако се по тоузи вправѣ поличіе вберѣте истин'но оу вногази вправ'чіе когано не вправила порота ... а веќе потом да несѣ тызїи поротници вѣровани*).⁷¹ As article 160 calls jurors "trusty men" (*да јестъ порота вѣровани чловѣци*), the words "those jurors shall not be believed" from article 154 undoubtedly mean loss of honour. The second case concerns a lord who abused a right of maintenance (article 57): "And if any lord be on maintenance and do wrong to any man by rancour, waste his land, burn his house, or do any other mischief, his holding shall be taken from him and another shall not

69 See Chapter 10, section 6.

70 Burr, "The Code of Stephan Dušan", pp. 199, 200 and 518; Novaković, *Zakonik*, pp. 11, 13 and 84; *Zakonik cara Stefana Dušana*, vol. III, pp. 100 and 128.

71 Burr, "The Code of Stephan Dušan", p. 528; Novaković, *Zakonik*, pp. 120–121; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

be given to him” (Кон ꙗ властѣлинь на прѣселнице; конѣ пизмомъ конѣ зло Ѹчини земли пленомъ, и коуѣиѣ пожеже, или конѣ любо зло Ѹчини; такози тѣзи дръжава да мѣ се оузме, а ина да не дасть).⁷² “It was customary for the Tsar to send his nobles on official duty to regions remote from their estates and to issue authority to them to demand board, lodging and transport from the inhabitants.”⁷³ If he abuses his rights he shall be deprived from his manor, but he shall lose the honour to get another holding estate, as well. Supplementary to article 57 is the clause of article 142, which orders: “Any lord, greater or less, to whom I have given land and towns, if any of them be found to have seized villages and people against the law of my Empire which I have enacted in my Council, let his estate be taken from him” (Властѣлѣмъ и властѣличикѣмъ конѣмъ ꙗсть дало царство ми землю и градовѣ; ако се кто ѡд нѣхъ ѡберѣте ѡпленивъ села и людѣи и затрѣвъ прѣзаконъ царства ми цю естъ царство ми оузаконило на съборѣ; да моу се оузмѣ дръжава).⁷⁴ But this provision deals with cases where noblemen were appointed to administer newly acquired territories.

Several articles of the Law Code of Stefan Dušan mention disqualification from holding an office as a penalty. According to article 32, stewards of Church manors, who wilfully drive Church labourers and shepherds away, “let their land and people be taken from them” (и да имъ се оузме земля и людѣе). Article 20 forbids a priest from attending the taking out of bodies of graves for magic: “and if any priest shall come to it, let his priesthood be taken from him” (ако ли боудѣ попъ на този дошьль да мѣ се оузме поповѣство). Article 28 orders: “And in all churches the poor shall be fed as is written by their founders; and should any one fail to feed them, be he Metropolitan, bishop or hegoumenos, he shall be deprived of his office” (и по възѣхъ цръквахъ да се хранѣ оубоузи, како ꙗсть оуписано ѡт ктиторѣ; кто ли не оухранѣ ѡдъ митрополитѣ, и ѡт епископѣ, или ѡт игѣменѣ, да се ѡтлоучи сана). According to the Athos manuscript, article 13 says that Metropolitans, bishops and hegoumenos who were appointed by bribery shall be deprived of their office, as well as the persons who were appointed by them (и митрополитѣ ꙗ епискоупи, игоумени по митѣ да се не поставѣ ... и ако се наидѣ кон любо по митѣ став, да извѣржетъ се ѡба ѡт сана, и поставивѣи, и поставленѣи).⁷⁵

72 Burr, “The Code of Stephan Dušan”, p. 209; Novaković, *Zakonik*, pp. 48–49; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

73 Burr, “The Code of Stephan Dušan”, p. 209 (comment on article 57).

74 Burr, “The Code of Stephan Dušan”, p. 525; Novaković, *Zakonik*, p. 109; *Zakonik cara Stefana Dušana*, vol. III, pp. 138, 140.

75 Burr, “The Code of Stephan Dušan”, pp. 204, 202, 203; Novaković, *Zakonik*, pp. 30, 23, 27, 17; *Zakonik cara Stefana Dušana*, vol. III, pp. 106, 104; vol. I, pp. 166, 168.

Disqualification from holding an office, expressed by the formula “let him be deprived of his office”, can be found in Saint George’s charter as well, where we read: “If the hegoumenos be found to misjudge, let him be deprived of his office” (Аще ли се наиде игоумень кривеω соудивъ, да изверъжетъ се сана).⁷⁶

8 The Right of Asylum (Greek ἄσυλον, ἀσυλία, Latin *asylum* or *refugium* = Shelter, Refuge)

The right of asylum is in Greek ἄσυλον, ἀσυλία, and in Latin *asylum* or *refugium* = shelter, refuge. Asylum (from Greek α = privative and σύλη = right of seizure) is a sanctuary or inviolable place of protection, such as a church, where criminals and debtors sheltered themselves from capture and punishment, and from which they could not be forcibly taken without sacrilege. Temples and altars were anciently considered asylums, as were tombs, statues of the gods, and monuments.

In all Christian mediaeval States, churches had the right of asylum for culprits. Byzantine law, starting from Justinian’s epoch, contains provisions on asylum in churches,⁷⁷ and they became well known in mediaeval Serbia from the translation of the *Procheiron*. Matheas Blastares in his *Syntagma* created Chapter E-13 under the title “On refugees in a Church” (Περὶ τῶν ἐν Ἐκκλησίᾳ προσφύγων, Ὁ ἵκε κὲς цркви приѣтъгльць).⁷⁸ The majority of laws were taken from the *Basilika* and some from the *Procheiron*.

- “It is not allowed to expel a refugee from the Holy Church; if someone dare to do that, let his priesthood be taken from him for the sin of sacrilege” (τοὺς δὲ τοῦτο τολμήσαντος, τῷ τῆς ἱεροσυλίας ἐγκλήματι ὑποβάλλεσθαι, ἵκε λι сие смѣв’шихъ сътворити, ἵке свештен’ногат’ства съгрѣшеніемъ низлагати се).
- “Anyone who wilfully drives away a person who found a shelter in the Holy Church shall be flogged and cropped and banished” (τυπτόμενος καὶ κουρευόμενος ἐξορίζεσθω, биемъ и остриζаемъ да затакаιетъ се).⁷⁹
- To an armed slave (μεθ’ ὅπλων ὁ οἰκέτης, сь оружиемъ рабъ) asylum would not be offered; he would be expelled, and if he resisted he would be forced

⁷⁶ Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

⁷⁷ For example see *Ecloga* xvii, 1, ed. Burgmann, p. 226.

⁷⁸ Ed. Ralles and Potles, p. 263; ed. Novaković, p. 277.

⁷⁹ *Procheiron* xxix, 7, which adds that a culprit cannot count on his social status to be pardoned from penalty (ἰδίᾳ χρώμενος αὐθεντία ἀποσπάσας, на свое го̀сподѣство на̀дѣѣ се истръгнеть). Ed. Zepos, vol. II, p. 217; ed. Dučić, p. 398; ed. Petrović, p. 322a.

to leave the place of refuge. If he died in a battle, his master, who killed him, would not be guilty.

- “To murderers, adulterers and abductors (Οὔτε δὲ ἀνδροφόνους, οὔτε μοιχοῖς οὔτε παρθένων ἄρπαξι, Ни же мѹужеѹбѣицамъ, ни прѣлюбоѹбѣицѣмъ, ни же дѣвице похиштѣникомъ) a sanctuary does not offer protection. They shall be driven away from the church and punished. Because a law offers protection to the persons who suffer, not to those who do injustice.”
- “Nobody who found shelter in a church can be kidnapped by force (Μηδεὶς τὸν ἐπ’ Ἐκκλησίᾳ προσφεύγοντα βιά ἀφαιρείσθω, Никтоже иже въ цркви прѣбѹгашаго нѹждею да отѣмлет). On the culpability of the refugee a priest has to be informed (ἀλλὰ τὴν αἰτίαν τοῦ πρόσφυγος δήλην ποιείτω τῷ ἱερεῖ, нь виноу прѣбѹгльца ѡблѣнѣноу да творить свештенѣникоу), and with his consent the refugee’s guilt shall be examined, according to the law.”
- “If someone dared to seize by the hands a refugee and force him away from the Church, he shall be flogged with 12 strokes” (Εἰ δέ τις δοκιμάσει χειρὶ ἀπὸ τῆς Ἐκκλησίας ἀποσπᾶσαι τὸν πρόσφυγα, ὁ τοιοῦτος δώδεκα ἄλλακτὰ λαμβανέτω, Аште ли кто покоусить се роукою отъ цркви оттрѣгнути прѣбѹгльца, такоѹи дванадесете жъзлоу дарѣни да прѣиметь).
- “It is necessary that competent judges try refugees, and the Church shall not call their adversaries” (Δεῖ δὲ παρὰ τοῖς προσφόροις δικάζεσθαι δικασταῖς τοὺς πρόσφυγας, καὶ οὐχὶ παρὰ τῇ Ἐκκλησίᾳ τοὺς ἀντιδίκους αὐτῶν μετακαλεῖσθαι, Подобаѣтъ же отъ прикладныхъ съ сѹмоу сѹдимомъ быти сѹдѣи прѣбѹгльцѣмъ, а не отъ цркви оупьрѣникомъ ихъ призивати се).⁸⁰

Dušan’s Law Code provides the right of asylum in two articles. Article 112, entitled “On escape from prisons” (Љ оутеченѣи тѹмничномъ), orders: “If any man escape from prison, so soon as he come to my court, be he my man or a man of the Church or of a lord, forthwith let him be free” (Кои чловѣкъ оутече ис тѹмнице, с чимъ прѣидѣ на дворъ царства ми, или кѣтъ чловѣкъ царства ми, или црковны, или властѣлѣскы, с темъзѣи да кѣтъ свободѣнь). Article 113, with a title “On prisoners” (Љ сѹжнѣ), says: “And any prisoner kept in my court, if he escape to the court of the Patriarch, let him be free, and similarly if to the court of the Tsar, let him be free” (Кои се сѹжънь дръжѣи оу дворѣ царства ми, тере оутече на дворъ патрѣаршѣ да кѣтъ свободѣнь, и такожде на дворъ царевѣ да кѣтъ свободѣнь).⁸¹

This version of the right of asylum (Tsar’s and Patriarch’s court) is framed on more generous terms than in Byzantium, where an exception was made for

80 Ed. Ralles and Potles, pp. 262–265; ed. Novaković, pp. 277–278. Cf. *Basilika* v, 1, 11–14.

81 Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, pp. 86–87; *Zakonik cara Stefana Dušana*, vol. 111, p. 130.

heretics, heathens, slaves, murderers, adulterers and traitors. Dušan excludes only *otrok* (article 72).⁸²

The Ravanitza manuscript, dating from the last quarter of the 17th century, includes a legal text—the so-called “Law of Emperor Constantine Justinian” (Благоуѣстѣваго и христолюбиваго цара великаго Константина Юстиниана законъ).⁸³ The right of asylum is defined in article 46 ordering that nobody may wilfully, “with his own hand” (или рѣкѣ възложити на), seize a refugee, even the Tsar’s servants (ни сами слѣдѣга црвевь). If someone dare do that, he shall be beaten with sticks and punished with the penalty provided for the individual seeking refuge (да биѣтсе палицами и да подлежитъ въсѣ винѣ беже-цаго).⁸⁴

9 Acts of Grace

The Byzantine Emperor is “the guardian of laws” (φύλαξ τῶν νομῶν),⁸⁵ a lawful ruler, and “the task of the Tsar is to do good, for which he is called a benefactor”.⁸⁶ That was the reason why the Tsar had the power to grant a pardon, a reprieve, an abolition and an amnesty. The right of asylum was connected with pardon—an executive action that mitigates or sets aside punishment for a crime. A culprit who found shelter in a church had to await a so-called “letter of pardon” (κнигѣ милостиѣ, λόγος ἀπάθειας, *littera gracialis*) from the Tsar.

Pardon and reprieve was prescribed in Chapter Π-14 of the *Syntagma* of Matheas Blastares under the title “On punishments” (Περὶ ποινῶν, *O kaznechъ*). “Capital punishment shall be executed with a delay of 30 days, because it is possible that in the meantime the Tsar grants a reprieve to the culprit” (Ἐὰν ἐπαγάγη ὁ βασιλεὺς τιμωρίαν τινί, μὴ κολαζέσθω παραχρῆμα ὁ καταδικασθεὶς, ἀλλ’ ὑπερτιθέσθω .λ. ἡμέρας ἢ κατ’ αὐτοῦ τιμωρία ἴσως γὰρ τεύξεται φιланθρωπίας, *Цпе*

82 See Chapter 5, section 3.2.

83 *Zakonik cara Stefana Dušana*, vol. III, p. 341.

84 Andreev and Cront, *La loi de Jugement*, p. 53. Cf. B. Marković, “Pravo azila u vizantijsko-srpskoj pravnoj kompilaciji Zakonu cara Konstantina Justinijana” [“The Right of Asylum in the Compilation of Byzantine-Serbian Law of Emperor Constantine Justinian”], *ИČ 53* (2006), pp. 9–22, especially pp. 15–16.

85 In the Byzantine Empire there existed also the office of νομοφύλαξ, literally “the guardian of law” (законохранитель in Serbian translation). It was created in 1043 by Emperor Constantine IX as president of the Law School in Constantinople. The office quickly changed character after its creation and became a position between the State and Church administration.

86 See Chapter 8, section 3.

НАНЕСЕТЬ ЦАРЬ ТОМАЛЕНІЕ КОМОУ, ДА НЕ ТОМИМЬ БОУ ДЕТЬ АБІЕ ОСОУЖДЕНЬ БЫВІИ, НЬ ДА ПОЖДАВАЮТЬ СЕ .Л.-ТЕ ДНІИ ІЕЖЕ О НІЕМЬ ТОМАЛЕНІЕ; НЕКЛИ ПОЛОУЧИТЬ УЛОВЬКО-ЛЮБІА).⁸⁷

Abolition (from the Latin word *abolere* = to destroy utterly), the destruction, annihilation, abrogation, or extinguishment of anything is used nearly synonymously with pardon, remission and grace. In Byzantine law it was applied for culprits in Church asylum. Any of them could get a “letter of pardon” from the Emperor and would have to suffer a spiritual sentence for his sin.

Amnesty is a sovereign act of forgiveness for past acts, granted by a Tsar to all persons or to certain classes of persons who have been guilty of a crime. Concerning amnesty, the *Syntagma* of Matheas Blastares has the following provision: “On the first day of Easter, even if there is no Emperor’s order on that, all prisoners that are in dungeons shall be released, except blasphemers, adulterers, abductors, plunderers of graves, sorcerers, herbalists, murderers and patricides or anyone who hatches a plot against the Emperor or the City” (Τῇ πρώτῃ τῶν πασχαλίων ἡμερῶν, καὶ βασιλικῆς ἐπὶ τούτῳ μὴ καταλαβούσης κελεύσεως, πάντες οἱ ἐν φυλακαῖς ἀπολύεσθωσαν, εἰ μὴ ἄρα ἱερόσυλός ἐστιν, ἢ μοιχὸς, ἢ παρθένων ἄρπαξ, ἢ τυμβωρύχος, ἢ γόης, ἢ φαρμακός, ἢ φονεὺς, ἢ πατροκτόνος, ἢ κατὰ βασιλέως ἢ πόλεως εὐρέθῃ μηχανησάμενος, Вь пръвѣи отъ пасхаліе дньи, и царскомоу о семъ не стигшоу повелѣнію, в’си иже вь тьмницахъ да погыштують се, развѣ аште оубо свештенотатыць кєть или прѣлюбодѣи или дѣвицоу-хыштнику, или гробо-рителю, или обавнику, или чародѣи, или доушегоубьць, или отцеубителю, или на цара или на градъ обрештеть се кьз’ньствовавъ).⁸⁸ So, amnesty was granted for all criminals who had committed misdemeanours—less serious crimes. The origin of this clause is unclear.

Article 115 of Dušan’s Law Code, entitled “On absconders” (У побѣг’ствѣ), is concerned with amnesty: “If any man receive another from another estate who shall have fled from his own lord or court, if he produce the Tsar’s letter of pardon, it shall not be contradicted. But if he show no pardon, let him be sent back” (И кто кєть чїєга чловѣка прїєль ис тоуждє землє, а внѣ иє побѣгль вт своєга господара вт соуда ако даа книгѣ милостнѣ царєвѣ да се не потворїи; ако ли нѣ дастъ милости да мучєє врати).⁸⁹

A similar provision is contained in Despot Stefan Lazarević’s charter from 1406, presented to the monasteries Tismany and Voditsa (today in Romania), where we read:

87 Ed. Ralles and Potles, p. 432; ed. Novaković, p. 457. Cf. *Basilika*, LX, 51, 57.

88 Ed. Ralles and Potles, p. 428; ed. Novaković, p. 453.

89 Burr, “The Code of Stephan Dušan”, p. 519; Novaković, *Zakonik*, p. 88; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

And if any man fled from my land in Hungarian land or in Bulgarian land, be it my man or my nobleman's man, if he spent there three, two or one year, and wanted to come back in previous church villages—let him be free to come back; excepted are those persons who have committed the following crimes: if he did something wrong to me, if he stole from one of my noblemen, if he was a murderer, if he has committed larceny of the Church's objects, if he was a purchased slave, if he was abductor—those shall not be free.

аще кто побѣгне отъ земли Царства ми, оу Оугръскои земли, или оу Българскои, или мои чловѣкъ, или моего властелина, прѣбывѣ тамо три лѣта, или двѣ, или едино, и въсхоцѣтъ възвратити се оу прѣдреченнаа села црьковнаа, свободнѣ да естъ да прѣидеть. Тѣчїю кромѣ винѣ сїхѣ; аще бѣдетъ Царствѣ ми цю испакостиль, или бѣде властелина моего покраль, или бѣдетъ оубїица, или свещеннокрад'ць, или є робѣзъ кѣплень на имѣнїи, или дѣвицопохищитель; таковыѣ свобода да не даваѣтъ се по писан'ныхъ.⁹⁰

However, according to this charter only monasteries could grant the amnesty.⁹¹

90 Ed. Mladenović, *Povelje i pisma despota Stefana*, p. 352.

91 On punishments in Serbian mediaeval law, see Taranovski, *Istorija*, vol. 11, pp. 37–79; Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 461–469; Janković, *Istorija države i prava feudalne Srbije*, pp. 93–95; Troyanos and Šarkić, “Ο κώδικας του Στέφανου Δουσάν και το βυζαντινό δίκαιο”; Šarkić, *Srednjovekovno srpsko pravo*, pp. 108–110; and S. Šarkić, “Kazne”, in *LSSV*, pp. 269–270. On penalties in Byzantine law, see S. Troianos, “Die Strafen im byzantinischen Recht. Eine Übersicht”, *Jahrbuch der Österreichischen Byzantinistik* 42 (1992), pp. 55–74.

Crimes Against the State and Sovereign

1 Treason

Treason is a breach of allegiance to one's government, usually committed through levying war against such government or by giving aid or comfort to the enemy. Under English common law acts against the King were called "high treason",¹ while in Serbian mediaeval law the term to denote any crime affecting the King's (Tsar's) person or dignity was *nevera* (невѣра, ἀπιστία).² In modern Serbian the word *nevera* mostly means "disloyalty", "infidelity", "faithlessness", and for "treason" and "high treason" the terms *izdaja* (издаја) and *veleizdaja* (велеиздаја) are in use.

Legal acts promulgated before Dušan's Law Code clearly show that high treason was in the sphere of the King's Court of Justice.³ King Milutin's charter to the family Žaretić from the city of Bar (1316) and Tsar Dušan's charter to the lesser lord Ivanko Probištitović (1350) testify that the sovereigns could deprive their noblemen of their manors only in a case of high treason (ДОГДЕ СЪ ВЪРНИ КРАЛѢВСТВѢ МИ; РАЗВѢ ЄДИНЕ НЕВѢРЕ).⁴ The examples of noblemen Vericha and

1 The matter was therefore raised in Parliament with a result that the famous Statute of Treason in 1352 (Edward III, st. 5, c. 2) laid down a definition, coupled with a provision that any further definitions in doubtful cases shall be made in Parliament. The *Statute* has high treason consisting in:

compassing or imagining the death of the King, his consort, or his eldest son; violating his consort, or eldest unmarried daughter, or the wife of his eldest son; levying war against the King in his realm, or adhering to his enemies in his realm, giving them aid and comfort in the realm or elsewhere; forging the great seal or the coinage, and knowingly importing or uttering false coin; slaying the treasurer, chancellor or judges while sitting in court.

High treason was never clergyable, and more than one prelate has paid the penalty. In English law "high treason" has to be distinguished from "another sort of treason", which was generally called *petit* or *petty treason*, as being: the slaying of a master by his servant; the slaying of a husband by his wife; the slaying of a prelate by his subject, secular or religious. See Th.F.T. Plucknett, *A Concise History of the Common Law* (Indianapolis IN 2010), pp. 443–444.

2 The word was in use in old Czech law as well—*nevěra*.

3 See King Stefan Dragutin's chrysobull presented to the monastery of Hilandar (1276–1281) and King Milutin's treaty with Dubrovnik (14 September 1302). Edited by Mošin, Ćirković, and Sindik, *Zbornik*, pp. 268 and 346. The "King's Court" mentioned in the text is similar to the "Court of King's (or Queen's) Bench", in English law, the supreme court of common law in the Kingdom.

4 SSA 6 (2007), p. 12 and SSA 8 (2009), p. 74.

Iritza show that they lost their estates committing the crime of high treason.⁵ Several articles of Dušan's Law Code (52, 140, 144, 161 and 192) mention *nevera* but without specifying a penalty. This could be explained by the fact that the *Syntagma* of Matheas Blastares contains a great number of provisions concerning high treason.

Roman law prescribed capital punishment with a confiscation of property for treason and high treason.⁶ Close to high treason was *crimen laesae maiestatis* (καθοσίωσις)—the crime of *lese-majesty*, or injuring the Imperial majesty.⁷ According to Justinian's *Institutes*,⁸ *crimen laesae maiestatis omnia alia crimina excedit quoad poenam*, i.e. “the crime of *lese-majesty* exceeds all other crimes in its punishment”. Provisions of Roman law on treason were taken by the *Ecloga*⁹ and *Procheiron*.¹⁰ Using those rules Matheas Blastares created two chapters: Π-21, under the title “On traitors” (Περὶ προδοτῶν, Ὁ πρѣдатеѣлихъ),¹¹ and Σ-11, entitled “On those who found a secret alliance or hatched a plot or prepared an uprising” (Περὶ τῶν συνωμοσίας, ἥ φατρίας, ἥ στάσεις ποιοούντων, Ὁ иже оклинающихъ се междоу собою или коумбаниѣ или крамолоу творещихъ).¹²

5 See Chapter 18, section 4.

6 *Cod. Iust.* ix, 8, 5, a law promulgated in the name of Emperors Arcadius and Honorius (a. 397).

7 *Cod. Iust.* ix, 7, 1, *Si quis imperatori maledixerit*, a law promulgated by Emperors Theodosius, Arcadius and Honorius (a. 393).

8 *Iust. Inst.* iv, 18, 3, *De publicis iudiciis*.

9 xvii, 3, ed. Burgmann, p. 226. “The *Ecloga* determined that the verdict should not be issued immediately, even though it would be appropriate in the case of high treason, to avoid injustices being done or to prevent high treason from becoming a weapon of slander by the enemies of the accused, allegedly turned against the Emperor. For this reason, it was necessary above all to guard the arrested person well, and then to report the actions for which he is charged to the Emperor, who will interrogate the accused himself and then decide. Consequently, the legislation imposes a specific course: arrest, imprisonment, report of acts to the Emperor, interrogation, trial and verdict by the Emperor himself.” C.A. Bourdara, “Procedural Matters Concerning the *Crimen Laesae Maiestatis* (Crime of High Treason) in Mid-Byzantine Period”, *NOMOPHYLAX, Collection of Papers in Honor of Srdan Šarkić*, ed. T. Ilić and M. Božić (Belgrade 2020), p. 94.

10 xxxix, 1, 3, 9, 10, 17, 19, 38, ed. Zepos, vol. II, pp. 216–220. Cf. Bourdara, “Procedural Matters Concerning the *Crimen Laesae Maiestatis* (Crime of High Treason) in Mid-Byzantine Period”, pp. 93–100.

11 Ed. Ralles and Potles, pp. 442–443; ed. Novaković, pp. 467–468.

12 Ed. Ralles and Potles, pp. 449–450; ed. Novaković, pp. 476–477. It is interesting that the Serbian translator for the Greek word φατρία (plot) used the Latin (Italian) term *κοумбаниа* (*compagnia*). Cf. *The Statute of Dubrovnik* II, 1, B (*Et omnes companias, et sacramenta facta et facienda, et reitates disturbabo*) and VI, 11 (*Qui fecerit compagniam per sacramentum vel per promissionem*). Ed. Šoljić, Šundrica, and Veselić, pp. 124 and 324.

Chapter Π-21 starts with the ninth rule of Gregory Thaumaturgus, or Gregory the Miracle-Worker, a Christian bishop of the third century (Γρηγορίου τοῦ Θαυματουργοῦ θ', Девятое правило святаго Григоріа чюдотворца), which says that those persons who were captured by barbarians and had later forgotten that they had been Christians, and had killed some of their fellow tribesmen (ἐνί-σους τῶν ὁμοφύλων, нѣкые отъ единомлємєн'ныхъ) had to be expelled from the community of believers (καὶ τῆς ἀκροάσεως ἐκβληθῆτωσαν, и послоушаніа да изгнаніи бꙋдоутъ) until the Holy Fathers, and before them the Holy Spirit, decide what will happened with them.

In the next lines we read four secular laws, taken from the *Procheiron*:

- a) "He who keeps encouraging a warrior or betrays a Roman citizen to an enemy shall be punished by the death penalty" ('Ο ἐρεθίζων πολεμίους, ἢ προδιδούς Ῥωμαίους, κεφαλικῶς τιμωρεῖται, Ποштракен ратники или прѣдѣе ратникомъ православно, главноѣ да томитъ се).¹³
- b) "All those Romans (Orthodox) who have deserted to the enemy should be killed like enemies" (Τοὺς ἐκ τῶν Ῥωμαϊκῶν πρὸς τοὺς πολεμίους ἀποφεύφοντας, ὡς πολεμίους ἔξεστιν ἀκινδύνως φονεύειν, Иж отъ православыныхъ къ ратникомъ отѣбѣшихъ, іако ратники лѣтъ кетъ безѣбѣднѣ оубивати).¹⁴
- c) "He who hatches a plot against the Emperor's life or against the State shall be killed and his property confiscated by the State" ('Ο κατὰ τῆς σωτηρίας τοῦ βασιλέως ἢ τῆς πολιτείας μηχανησάμενος, ἢ μελετήσας, φονεύεται καὶ δημεύεται, Иже на спасеніе царево или гражданѣство кѣзньствовавъ, или поугнивъ се, оубиваетъ се и разграбляется се).¹⁵
- d) "Those who willingly run away to the enemy and inform them on our decisions shall be punished by suffocation or by stake" (Οἱ πρὸς πολεμίους αὐτομολοῦντες, καὶ τὰς ἡμετέρας βουλὰς ἀπαγγέλλοντες, ἀπαγχονίζονται, Иже къ ратникомъ сами бѣжеште и наше съвѣти възвѣштаюште, оудавляются се или съжиздають).¹⁶

13 Ed. Ralles and Potles, p. 442; ed. Novaković, p. 468. Cf. *Procheiron*, xxxix, 1. On every place where the Greek text speaks on Ῥωμαῖοι (Romans, i.e. Byzantines), the Serbian translator used the word *ΠΡΑΒΟΣΛΑΒΕΥΗΝ* (Orthodox).

14 Ed. Ralles and Potles, p. 442; ed. Novaković, p. 468. Cf. *Procheiron*, xxxix, 3 = *Digesta*, xlviii, 8, 3, 6: *Transfugas licet, ubicumque inventi fuerint, quasi hostes interficere (Mar-
cianus libro quarto decimo institutionum)*.

15 Ed. Ralles and Potles, p. 442; ed. Novaković, p. 468. Cf. *Procheiron*, xxxix, 10 = *Cod. Iust.* ix, 8, 5.

16 Ed. Ralles and Potles, p. 443; ed. Novaković, p. 468. Cf. *Procheiron*, xxxix, 17 = *Digesta*, xlviii, 19, 38, 1: *Transfugae ad hostes vel consiliorum nostrorum renuntiatores aut vivi exuruntur aut furcae suspenduntur* (Paulus, libro quinto sententiarum).

Chapter Σ (C) - 11 starts with the 18th canon of the Fourth Ecumenical Council (Council of Chalcedon of 451) and the 34th rule of the Sixth Ecumenical Council (Third Council of Constantinople of 680–681): “If the civil laws, as an agreement of the wise men, forbade the foundation of secret alliances and the hatching of plots, the same shall the Church of God do” (Ἐν τοῖς πολιτικοῖς, φασι, νόμοις, ὧν οἱ πλείους πρὸς τῶν ἔξω σοφῶν συνετέθησαν, τὸ τῆς συνωμοσίας ἢ φατρίας ἀπειρήται τόλμημα, πολλῷ γε δήπου τῇ τοῦ Θεοῦ Ἐκκλησίᾳ, αἴτε γράδскими, рече, закони, отъ нихъ же множиши отъ вѣдѣшихъ мѡудръць сложише се, еже съоклинаніа или коумбаніе отреченно бысть дръзноутіе, много же паче Божию црьковію).¹⁷ In the next lines Matheas Blastares explained the difference between secret alliance, conspiracy and uprising. Secret alliance (συνωμοσία, съоклинаніе) exists when someone makes an agreement against somebody, and enters into an alliance about that with another person and does not persist from the agreement, until it was realized, as was told by Luke in the Acts of the Apostles: “And when it was day, certain of the Jews banded together, and bound themselves under a curse, saying that they would neither eat nor drink till they had killed Paul.”¹⁸

Conspiracy (φατρία, коум'баніа) is a combination between relatives or two or more other persons formed for the purpose of committing a criminal act. An uprising (τυρεύειν, ковь) exists when someone in a brutal and canny way prepares and attacks somebody.¹⁹

Two laws, taken from the *Basilika* (LX, 36, 4 and 18), order: “He who prepared conspiracy against the State, or calumniated the army or betrayed it to the enemy, or prevented Romans (Orthodox) by slyness from defeating the enemy, or who arranged that the enemy get military aid or money, or anything else—he is guilty of high treason” (Ὁ συνωμοσίαν κατὰ τῆς πολιτείας παρασκευάσας γενέσθαι, καὶ ὁ ἐπιβουλεύσας τῷ στρατοπέδῳ, ἢ τοῖς πολεμίοις αὐτὸ προδοῦς, ἢ ὁ κατὰ δόλον ἐμποδίσας ὑπὸ Ῥωμαίους γενέσθαι τοὺς πολεμίους, ἢ παρασκευάσας αὐτοὺς βοηθηθῆναι πλῆθει, ἢ ὀπλοῖς, ἢ χρήμασιν, ἢ ἑτέρῳ οἷῳ δὴ ποτε τρόπῳ, τῷ τῆς καθοσιώσεως ὑπόκειται ἐγκλήματι, Иже съоклинаніе на граждан'ство оустроивъ быти, и навѣтѡвавъ войскоу, или ратникомъ сию издавъ, или по льсти възбранивъ подъ православними бити ратникомъ, или оустроивъ сихъ помѡщѣ приѣти множествомъ, или оружіемъ, или иманіемъ, или иныимъ кыимъ люво образомъ, еже невѣре подлежитъ сыгрьшенію).

The law considered that anyone who brought together people without the Emperor's order, deserved to be severely punished (Ἀλλὰ καὶ τὸ συνάγεσθαι ὄχλον

17 Ed. Ralles and Potles, p. 449; ed. Novaković, p. 476.

18 Acts of the Apostles, 23, 12.

19 Ed. Ralles and Potles, p. 449; ed. Novaković, p. 476.

χωρίς βασιλικού ἐπιτάγματος, πολλῆς ἄξιον τιμωρίας κρίνεται πρὸς τῶν νόμων, **Нѣ иже събирати народъ кромѣ царьскаго повелѣнїа, многа достоинно томленїа соудити се отъ законъ**).²⁰

At the end of Chapter C-11, Matheas Blastares added a *Novella* of Emperor Constantine Porphyrogennetos, promulgated with the consent of Patriarch Alexios and the whole Council, pronouncing an anathema upon all those who prepare conspiracies or disorder (ἀναθέματι καθυποβάλλει τοὺς μέλλοντας ἢ ἐπιβουλαῖς ἐπιχειρεῖν, ἢ μούλτῳ, **анадеиѣ прѣдаиѣтъ хотештихъ или навѣсти начинати или мугъ'тар'ство**) and upon their accomplices.²¹

In Chapter B-7, entitled “Regarding that the Emperor is not to be disturbed” (“Οτι βασιλέα ὑβρίζειν οὐ δεῖ, **Глаго царю не подобиѣтъ досаждати**”), Matheas Blastares wanted to collect all provisions concerning the crime of *lese-majesty*. At the beginning he quoted the 84th rule of Saint Apostles which reads as follows: “Whosoever disturbs the Emperor or Prince without inducement, if he be a cleric, let him be excommunicated, if he be a layman, let him be expelled” (“Οστις ὑβρίζει βασιλέα, φησιν, ἢ ἄρχοντα παρὰ τὸ δίκαιον, εἰ μὲν κληρικὸς εἴη, καθαιρεῖσθω, λαϊκὸς δὲ, ἀφορίζεσθω, **Иже кто досадитъ царю, рече, или кнезю прѣзь правды, аще оубо причѣтникъ боудеть, да изверъжетъ се, людскыи же да отлогучитъ се**”).²² To enforce his arguments Matheas Blastares cited several passages from the Bible. Mosaic Law (Καὶ ὁ Μωσαϊκὸς γὰρ νόμος, **И мугъсенискы бо законъ**) orders: “and the Prince of thy people thou shalt not curse”²³ (“**Архонта τοῦ λαοῦ σου οὐκ ἐρεῖς κακῶς, Кнезю людѣи своихъ не речеши зла**”). And Peter, the first leader of the Apostles (ἡ κορυφή τῶν Ἀποστόλων, **врхъ апостолскыи**), said: “Honour the Emperor”²⁴ (Τὸν βασιλέα τιμᾶτε, **Цара почитайте**). According to Paul: “I exhort therefore, that, first of all, supplications, prayers, intercessions, and giving of thanks be made for all men; for Emperors, and for all that are in authority”²⁵ (ὑπερέυχεσθαι κελεύει τῶν βασιλέων, καὶ τῶν ἐν ὑπεροχῇ πάντων, καὶ ταῦτα ἀπίστων, **молитвы творити о царихъ повелѣваиѣтъ, и о всѣхъ иже въ величѣствѣ, и сѣа невѣр'ныхъ**).²⁶

Ecclesiastical rules were followed by three laws taken from the *Basilika*. The first law says that whosoever disturbs the Emperor should not be punished immediately, nor he should suffer brutally and vehemently (Ὁ τὸν βασιλέα

20 Ed. Ralles and Potles, pp. 449–450; ed. Novaković, pp. 476–477.

21 Ed. Ralles and Potles, p. 450; ed. Novaković, p. 477.

22 Ed. Ralles and Potles, p. 124; ed. Novaković, p. 129.

23 The Book of Exodus, 22, 28.

24 The Second Epistle General of Peter, 2, 17.

25 The First Epistle of Paul the Apostle to Timothy, 2, 1–2.

26 As we can see, Matheas Blastares has omitted the first part of Saint Paul's Epistle, but he added the words “and even for infidels”.

ὕβριζων οὐκ εὐθὺς τιμωρεῖται, οὔτε τι ἄλλο σκληρόν ἢ τραχὺ ὑπομένει, Иже царюу досаждае, не дѣѣ томиимъ кєтъ, ни же ино что жестоко, или люто постражєтъ), because if he said something from frivolity (ἀπὸ κουφότητος, οὐτὸν νєсьмыслєства) and he did not think prudently or he was insane—he should be pardoned. The Emperor should be informed about all the facts (ἀναφέρεται δὲ τὰ περὶ τούτου τῷ βασιλεῖ, оповѣдан'но же вывѣаетъ о сємь царєви), and he shall decide, according to the dignity of the person, whether he shall grant forgiveness or condemn a culprit (καὶ αὐτὸς ἐκ τῆς ποιότητος τοῦ προσώπου κρίνει, εἰ δόφειλει συγχωρηθῆναι ἢ τιμωρηθῆναι, и тѣ отъ каѣѣства лица соудитъ, аще длѣжно кєтъ прощєноу выти или томаиє'ноу).²⁷

The second law orders: “Whosoever commits a criminal act of conspiracy, i.e. brings together a troop against the Emperor, shall be executed by sword” (Ὁ καθοσίωσιν πλημμελῶν, ἥτοι φατριάζων κατὰ βασιλέως, ξίφει τιμωρεῖσθω, Иже коум'баниєю сѣгрѣшаиєи сирѣѣ съвыраєє чєтоу на цара, мѣчємъ да томиимъ боудєтъ).²⁸ By inserting this law in Chapter B-7 Matheas Blastares, who was not a brilliant lawyer, confused the crime of *lese-majesty* with high treason. The essential contents of this law were already exposed in Chapter Π-21, using different formulations, but the source was the same—*Procheiron* XXXIX, 10.

Finally we have a law which says that everyone who finds a slander against the Emperor written on paper and does not burn it, but starts to read it, shall be punished as the one who brought a slander action (Πᾶς ὁ εὐρίσκων φλυαρίαν κατὰ βασιλέως ἐν χάρτῃ ἐσφραγισμένην ἢ ἀσφράγιστον, καὶ μὴ παραχρήμα καίων, ἀλλὰ ἀναγινώσκων, ὑποκείσθω τιμωρίᾳ, ἥ τινι, ὑπέκειτο καὶ ὁ συντεθεικῶς τὴν φλυαρίαν, Вѣсакъ обрєтаиєи блєды на цара въ харт'и запєчатаєн'нѣ, и не дѣѣ иждизѣє, нѣ проуитѣє, да подлєжитъ томаиєи'ноу кємоу же бы подлєжалъ и сложи-выи блєди).²⁹

In the first part of Dušan's Law Code, only article 52 treats high treason (*nevera*), speaking on the collective criminal liability of the household (see above). However, it is in connection with article 51, under the title “Of presenting a son at Court” (Ἐ прѣдан'нѣѣи сына оу дворѣ), although article 51 does not mention the term *nevera*: “And when a man shall present a son or brother at Court, the Tsar shall ask him: “Shall I trust him?” And he shall say: “Trust him as myself.” And if he do any evil, let him pay who hath presented him. And if he should serve as others serve in the Tsar's Palace, he shall himself pay if he do wrong” (И кѣто прѣда сына оу дворѣ и оупроси га царѣ вѣрєвати ли га кю, и

27 Ed. Ralles and Potles, p. 125; ed. Novaković, p. 129. Cf. *Basilika*, LX, 36, 13 = *Cod. Iust.* IX, 8, 5.

28 Ed. Ralles and Potles, p. 125; ed. Novaković, p. 129. Cf. *Procheiron*, XXXIX, 10; *Scholia on Basilika* LX, 36, 19.

29 Ed. Ralles and Potles, p. 125; ed. Novaković, p. 129.

рече вѣрѣи колико и мене, ако које зло оучини, да плати њнѣи кон га је прѣдаль; ако ли такои име дворити каконо дворе оу полатѣ царевѣ, цю сѣгрѣши да плати самѣ).³⁰ It seems that in the first case, if it were a serious or disgraceful crime, the guarantor would be liable, but if the son or brother commit some venial offence or breach of discipline when serving at Court, he would himself pay the penalty.

Article 52 starts with the wording: “For treason for any case” (За невѣрѣѣ вѣсакѣ сѣгрѣшєнїе).³¹ So, articles 51 and 52 treat two essential elements of feudal public law: trust (*vera*) and treason (*nevera*). Breach of trust as any act done by a trustee contrary to the terms of his trust in Serbian mediaeval law meant a kind of treason. In Serbian it was clearly expressed by the antonyms *vera* and *nevera*.

For several crimes we find the formula “let him be punished as a traitor” (да се каже како и невѣрныкъ), but without specifying a type of punishment. For example, in King Dragutin’s charter presented to the monastery of Hilandar (1276–1281), we read: “Whosoever steals on the market-town using force ... let my lordship punish him as a traitor” (И на сѣмѣ тргоуѣ кто се вѣрѣте оуземѣ по силѣ ... а господѣствоуѣ да го кажет ѣко и невѣрника).³² Article 140 of Dušan’s Law Code commands: “No man may receive any man, neither ... And if he receive him, let him be punished as a traitor” (Никто ничїега чловѣка да не прима ... ако ли га кто прими такози да се каже кто любо како и невѣрныкъ). Article 144 contains a similar provision: “If any lord, great or small, or any other man of my Empire be found as fugitive, and the neighbouring village and the county around arise and plunder his home and cattle which he has left, those who do so shall be punished as traitors to my Empire” (Ако ли се вѣрѣте властѣлинь, или властѣличикѣ побѣглаць и инѣ кто любо царѣства ми, тѣте оустанѣ на грабленїе ѡколїна села, и жоупа на нїеговѣ коукю и на єговѣ добитѣкъ цю боудѣ ѡставиль, ѡниѣи кон този оучинѣ да се кажѣ како невѣрницїи царѣства ми).³³ Tsar Dušan’s charter, fixing the boundaries of Hilandar’s Mount Kunari (1349–1353), says: “Whosoever of the abovementioned persons does not respect [this charter] let him be scattered³⁴ and punished, according to the Law Code, as a

30 Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 44; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

31 Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 45; *Zakonik cara Stefana Dušana*, p. 112.

32 Mošin, Ćirković, and Sindik, *Zbornik*, p. 269.

33 Burr, “The Code of Stephan Dušan”, pp. 525 and 526; Novaković, *Zakonik*, pp. 108 and 111; *Zakonik cara Stefana Dušana*, vol. III, pp. 138 and 140.

34 The punishment of “scattering” (*da se raspe*): when applied to a village, scattering (*rasuti*)

traitor” (Тко ли потвори вѣдъ сѣхъ више писаннихъ мало или много, да се распе и накаже по законникѣ како и невѣрникъ).³⁵

Similar to the term *nevernik* (traitor) is *prebeglac* (прѣбѣгльць) = deserter, mentioned in article 142 of the Code: any lord, who has seized villages and people (ако се кто вѣдъ нѣхъ вѣрѣте вѣпленивѣ села и людѣи), shall be punished as a deserter (да се каже како и прѣбѣгльць).³⁶ As article 144 treats a fugitive lord (побѣгльць) as a traitor, we can conclude that the expressions *nevernik* and *prebeglac* in the text of the Code mean the same thing—a traitor.

2 Disobedience to the Sovereign's Orders

The Serbian monarch had granted very extensive privileges to the Church and to the nobles, but he wanted to assert his paramount authority over all. For this reason in legal acts we find the wording “whosoever disobeys my order”, or “my Imperial writ may not be disobeyed”. A person who disobeys the sovereign's order was called *preslušnik* (прѣслоушникъ) = disobedient, and the verb “to disobey” is *preslušati* (прѣслоушати).³⁷ For example, at the end of the charter of King Vladislav presented to the monastery of Saint Nicholas on the island of Vranjina (1241–1242), we read: “Whosoever be found to disobey my order, and perform act of malice, either to the land or to the people, let him receive my wrath and be punished by me the King, and let him pay 300 perpers” (Кто ли се вѣрѣте прѣслоушавѣ сѣе мое, испакости что вѣ земли или вѣ людехъ, да приме гнѣвѣ и наказаніе отъ кралеѣства ми, и да да кралеѣствоу ми. Т. перьперь).³⁸ King Milutin, granting privileges to Ragusan merchants (1302), *inter alia*, orders: “Whosoever disobeys my royal writ, let him receive wrath and punishment from me the King, and let him pay to me 500 perpers” (Тко ли прѣслоуша писаніе кралеѣства ми, да приме гнѣвѣ и наказаніе отъ кралеѣства ми, и да плати кралеѣствоу ми .е. съть перьперь).³⁹ But, in King Stefan Uroš's treaty with Dubrovnik (13 August 1252), for disobedience to the sover-

meant the dispersal of people, the burning of their houses and forfeiture of their property; when applied to individuals, only to the latter.

35 Edited by I. Komatina, *SSA* 13 (2014), p. 210. Tsar Dušan's charter refers to the Law Code, but adds “scattering” as a supplementary punishment, which the Law Code does not contain.

36 Burr, “The Code of Stephan Dušan”, p. 525; Novaković, *Zakonik*, p. 109; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

37 In modern Serbian we use the words *neposlušan* and *ne poslušati*.

38 Mošin, Ćirković, and Sindik, *Zbornik*, p. 163.

39 Novaković, *Zakonski spomenici*, p. 160, para. IV.

eign's order we find only the King's threat: "Whosoever be found to disobey my royal order, let him be punished by my wrath and my royal penalty" (Кто ли се вбръѣте преслѣшавъ повѣленіе кралевѣства ми, да се накаже гневом и наказаніемъ кралевѣства ми).⁴⁰ Pecuniary punishment (fine in money), as in the two previous cases, was not prescribed.

Disobedience to the Tsar's orders is treated in article 136 of Dušan's Law Code: "My imperial writ may not be disobeyed, to whomsoever it be sent, be it to the Lady Tsaritsa, or to the King, or to the lords, great or small, or to any man. No man shall disobey what is written in my writ. But if such a writ cannot be fulfilled, then let him who received it go forthwith back with the writ to me to explain to me" (Книга царства ми да се не прѣслѣша гдѣ приходи, или кѣзъ госпожди царици, или кѣзъ кралу, или кѣзъ властѣломъ великымъ и малымъ и вѣсакомъ чловѣкъ; никто да не прѣчюне цю пише книга царства ми; ако ли боудѣ таковази книга цю не може внѣзи сѣврѣшити, воля не има да дасть тѣзи часъ, да гредѣ впетѣ с книгомъ, кѣзъ царствоу ми да вповѣ царствоу ми).⁴¹ In close connection with article 136 are articles 129, 148 and 178. Article 129 orders: "In every army the commanders have authority even as the Tsar himself. What they say, let it be obeyed. If any man disobey them in anything, he shall be tried even as though he had disobeyed the Tsar" (На вонцѣ на вѣсакои да вбладаю воеводѣ, колико и царѣ. цю рекѣ да се чюне; ако ли ихъ кто прѣчюне оу чемъ; да юсть този всоудженіе кою и внем'зѣи кои бы цара прѣслоушали).⁴² According to article 148, "whosoever disobeys the writ of my judges ... they shall be punished as disobedient to my majesty" (тере прѣслоуша книгѣ соудѣа царѣства ми ... тѣзѣи вѣзи да се всоудѣ іако и прѣслоушници царѣства ми).⁴³ Finally, article 178 prescribes that authorities that do not execute judges' writs, should be punished even as disobedient ones (аце ли не сѣврѣше власти, да се кажѣ како прѣслоушници).⁴⁴

It is evident that article 136, which insists on the obedience of "any man" (и вѣсакому чловѣкоу), including Lady Tsaritsa and Crown Prince, did not provide a criminal penalty for disobedience to the sovereign's orders. The Code

40 Mošin, Ćirković, and Sindik, *Zbornik*, p. 188.

41 Burr, "The Code of Stephan Dušan", p. 524; Novaković, *Zakonik*, p. 103; *Zakonik cara Stefana Dušana*, vol. III, p. 136.

42 Burr, "The Code of Stephan Dušan", p. 522; Novaković, *Zakonik*, p. 98; *Zakonik cara Stefana Dušana*, vol. III, p. 134.

43 Burr, "The Code of Stephan Dušan", p. 526; Novaković, *Zakonik*, p. 115; *Zakonik cara Stefana Dušana*, vol. III, pp. 140–142.

44 Burr, "The Code of Stephan Dušan", p. 534; Novaković, *Zakonik*, pp. 138–139; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

envisages only the case if a writ cannot be fulfilled; then a Tsar's messenger shall go to the Emperor with the writ to explain to him. Regarding what could happen after that, we have no information in the text of the Law Code. According to hypothesis of Teodor Taranovski, three possibilities existed, according to the circumstances: 1) the order could be repeated; 2) the writ could be abolished; or 3) the writ could be changed.⁴⁵

However, in feudal society it was not strange that mighty lords and the sovereign's closest relatives would disobey the King's or Tsar's writs. Aleksandar Solovjev quotes two examples within the family of Tsar Dušan.⁴⁶

Tsar Dušan appointed his brother-in-law Despot John Komnenos (Κομνηνός) as a lord of the greater part of Albania. On the Adriatic coast, close to the city of Avlona (Greek Αυλώνας, Italian *Valona*, modern *Vlorë* in Albania), Despot John plundered an aground Venetian boat (*inter cetera requisivit de certo damno dato in quadam navi viri veneto in partibus Avalone per cognatum domini imperatoris*), referring to the *ius naufragii*,⁴⁷ although this custom was explicitly abolished in Tsar Dušan's treaty with Dubrovnik from 20 September 1349 (И цю се разъбие древо венетъчко и дѣбров'чкѡв, цю ѡтече ѡ землю царства ми и кралиевѡ, да се не ѡзме ницю, да есть свободнѡв).⁴⁸ As the Venetian ambassador⁴⁹ took a complaint to the Tsar, Dušan promised to compensate the damaged property. According to the letter of the Venetian ambassador, Tsar Dušan sent a writ to his brother-in-law, ordering him to compensate the damage, but the Tsar's cousin did not undertake anything. It hurt the Tsar, but he could not do anything, for his love of the Tsaritsa (*Et dominus imperator misit predicto suo cognato ... et si reperiretur venetum esse damnificatum, faceret omnia integraliter emendari. Ipse vero cognatus domini imperatoris non misit, de quo dominus imperator molestum habuit, sed propter amorem domine imperatricis aliud dicere non potest*).⁵⁰ Finally, on 13 April 1350, the Tsar per-

45 Taranovski, *Istorija*, vol. I, p. 154.

46 Solovjev, *Zakonik cara Stefana Dušana*, p. 287.

47 The *ius naufragii* (right of shipwreck), sometimes *lex naufragii* (law of shipwreck), was a mediaeval custom (never actually a law) which allowed the inhabitants of the lord of a territory to seize all that washed ashore from the wreck of a ship along its coast. This applied, originally, to all the cargo of the ship, the wreckage itself, and even any passengers who came ashore, who were thus converted into slaves. This latter custom disappeared before the *ius naufragii* came to the attention of lawmakers. Modern law has a concept of *ius navigandi* (the right of navigating or navigation), i.e. the right of commerce by ships or by sea.

48 Edited by D. Ječmenica, *SSA II* (2012), p. 40.

49 The word translated as "ambassador" is *poklisar*, from the Greek ἀποκρισιάριος.

50 Ljubić, *Listine o odnošajah između Južnoga Slavenstva i Mletačke republike III*, p. 176.

sonally paid 1120 ducats at the expense of the wrecked ship and sent money to Venice through his envoy Michael de Buchia (Михајло Буџа). In another letter, written on 20 September 1349, Tsar Dušan gave an assurance to Venetian and Ragusan envoys that he would pay all his debts and, among other things, 1600 Venetian perpers for the ship, wrecked in the region of Zeta (modern Montenegro), and taken by Lady Tsaritsa (И љеце имь љестъ царьство ми дльжно за дрѣво кою се љестъ љ Зѣтѣ разъбило, тере љзела госпога царица, тисљкю .Ѣ. сътъ перперъ венељчкихъ).⁵¹

3 Forgery of Charters

Forgery is defined as the fraudulent making or altering of a writing whereby the rights of another might be prejudiced. The subject matter of forgery must be a writing or document that has some legal efficacy (effectiveness) such as a charter, deed, mortgage, will, promissory note, receipt, or other writing. Serbian legal acts mention only forgery of charters promulgated by the monarch.

At the end of Saint Georges's charter we read: "Whosoever shall be found, inspired by the Devil, to have changed any line of this chrysobull ... let him receive my royal wrath and punishment, and let him pay to me, the King, 500 perpers" (Кто ли се вбреце оуљищениемъ днаволиемъ прѣтворивъ единому љрѣ-тоу вт сихъ вищеписанихъ љ семь хрисовоуљѣ ... вт таковихъ да приметъ кнѣвь и наказниѣ вт краљевьства ми и да плати оу цариноу .Ѣ. перперъ).⁵² Dušan's Law Code in article 138 orders: "If there be in any charter a word wrongly written and there be meaning changed and words altered otherwise than my Majesty commanded, let these charters be torn up and they shall not have the inheritance" (Ако се вбрѣте оу чѣемъ хрисоволи слово лъжно приписано и вбрѣтоу се словеса прѣтворен'на, и речи прѣтворене на ино него цю, ѣ повелѣло царство ми, да се тизѣи хрисовљли раздѣрљ, а вн'зи векѣ да не има бацинѣ).⁵³ As we can see, Serbian sources do not speak on forgery of a complete document, but rather on partial alteration of a text.

In a litigation between the Holy Mountain monasteries Esphigmenou (Μονή Εσφιγμένου) and Kastamonitou (Μονή Κασταμονίτου) in front of the city court of

51 Edited by D. Ječmenica, *SSA* 11 (2012), p. 49. It seems that Empress Helen had her own territory, probably in Zeta, where she governed independently.

52 Mošin, Ćirković, and Sindik, *Zbornik*, p. 329.

53 Burr, "The Code of Stephan Dušan", p. 524; Novaković, *Zakonik*, p. 105; *Zakonik cara Stefana Dušana*, vol. III, p. 138.

Serres (1365), the monks of Kastamonitou presented as evidence Tsar Dušan's charter. The chief judge, Metropolitan Sabba, after examination of the charter, concluded that it was a forgery.⁵⁴

4 Other Crimes against the State and Sovereign

Among crimes against the State and sovereign we can cite the minting of coins secretly (article 169) and the nonpayment of land tax, so-called *soće* (article 198). However, we have examined those issues above.⁵⁵

54 See Solovjev, "Sudije i sud po gradovima Dušanove države", p. 82, and Živojinović, "Sudstvo u grčkim oblastima srpskog carstva", p. 243.

55 See Chapter 6 and Chapter 18, section 4.

Crimes Against the Judicial System

Scholars assume that the formation of the judicial system in the Serbian mediaeval State was the result of the same sources in the formal sense—the same events and circumstances—that were experienced in other legal systems but recorded much earlier in their cases than in Serbian law.

The main outlines of the earliest situation in the realms of the Serbian Župans and later Kings are mostly inferred from historical interpretation of the clauses contained in Dušan's Law Code, which mentions practices called *samosud* and *odboj*. The practice of powerful armed lords dispensing justice on their own accord was already strictly forbidden at the time that our surviving Serbian legal sources were written. Following the model of the more developed neighbour—the Byzantine Empire—the State began to interfere in the payment of sanctions shaped in customary law.

1 So-called “Samosud”

The Serbian word *samosud* (*samo* = self and *sud* = judgment)¹ designated in mediaeval legal terminology judgment arbitrarily and wilfully without a court. Usually mighty lords, who were creditors, used their power to seize by force the property of debtors. The Serbian monarchs tried very hard to stop this practice, especially in commercial relationships with the Ragusans. Already in the treaty of the Great Župan Stefan Nemanjić with Dubrovnik (1214–1217), we read: *a da ne izma* (А ДА НЕ ИЗМА),² meaning not to be deprived of anything by any party to the agreement. However, this provision was not followed by a corresponding penalty, which went unmentioned. Punishment was provided for the first time in King Milutin's treaty with Dubrovnik (1282–1289), ordering: “Whosoever shall be found doing an act of malice or seizing property, let him receive my royal wrath and penalty, and let him pay 500 perpers to me, the King” (Кто ли се обрѣте испакостивъ имъ или цю ѿзъмъ одъ нихъ да примѣ гнѣвъ и наказаніе вѣт кралевьства ми и да плати пѣтъ сътъ перперъ кралевьствѣ ми).³

1 In Serbian *sud* also means court, tribunal and courthouse, but in this coined word it means judgment.

2 Mošin, Ćirković, and Sindik, *Zbornik*, p. 87. The word *izam*, used in the treaty, is unclear and we shall discuss it in Part Six.

3 Mošin, Ćirković, and Sindik, *Zbornik*, p. 290.

Samosud was mentioned also in documents regulating relationships within a manor. Saint Stephen's charter prohibits *samosud* among a monastery's villagers, and prescribes a fine of six dinars (самосудъ по .S. динарь).⁴ Dušan's Law Code, trying to protect the immunity rights of the Church, in article 30, entitled "Of molesting Clerics" (Ѡ оуѣ'ванїи црьковнаго чловѣка), orders:

Henceforward no authority may molest a monk or a serf of the Church. And whosoever shall do this in the lifetime or after the death of my Majesty, he shall not be blessed. And if anyone be guilty towards another let him sue him through the courts and by suit according to law. And whosoever shall molest or damage anyone without judgment, let him pay sevenfold.

Ѡт селѣ да не оуѣ'вѣ ни єдина властъ калѣгїера, или црьковнаго чловѣка; и кто потвори сїе при животѣ и по сзмерѣти царства ми да нѣсть благословень; ако ли кєсть кто комѣ кривѣ, да га ицє соу'домъ и правдомъ по законѣ; ако ли оуѣ'вѣ без' соу'да, или комѣ забави, да плати самосед'мо.⁵

Undoubtedly article 30 refers to the noblemen class. As they were powerful, they abused their force, they were impudent, and they often ignored the judiciary system, molesting peaceful clerics. That was the reason why Dušan's Law Code provided for a special crime against judicature (article 101), called "On violence" (Ѡ силїю), and it runs as follows: "There shall be no violence against any man in my dominion: and if there should be a case of assault or violence, let all his horses be taken from him, one half to the Tsar, the other to him who was attacked" (Силє да нѣсть никомѣ ницю ѣ земли царства ми; ако ли кога вбѣ'вѣтє наезда или сила похвал'наа; внизи кони наезны вѣси да се оузмѣ; половина царствѣ ми, а половина вномѣзи когано сѣ напѣхалїи).⁶ The Athos, Hodosh and Bistritza texts start with a wording: "There shall be no violence against anyone and for any debt in the imperial lands" (Силѣ да нѣсть никому ни за єднѣ длгѣ оу земли царскои), and add that the penalty shall be: "and the men committing invasion shall be punished as is written in the Law of the Holy Fathers, in the Town Branches;⁷ let him be tortured as would a deliber-

4 Ibid., p. 465.

5 Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, pp. 28–29; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

6 Burr, "The Code of Stephan Dušan", p. 516; Novaković, *Zakonik*, pp. 77–78; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

7 I.e. *Procheiron*, Chapter xxxix.

ate murderer" (и чловѣци наѡхалци да примоуѣтъ казнѣ како пише оу законуу светѣихъ вѣтъцьъ, оу градскихъ гранахъ, да мочит се ѡко и волни оубѣица).⁸ So, article 101 prohibits *najezda* (invasion, foray) and *sila pohvalna* (violence), typical phenomenons of a feudal society. As the Athos, Hodosh and Bistritza texts use the word "debt" (длъгъ), which was in Serbian mediaeval law a general term for a claim or demand of outstanding debts, it is evident that article 101 prohibits judgment arbitrarily and wilfully without a court, so-called *samosud* (*sibi ius dicere*).⁹ The expressions *najahati* (наѡхати) = "to attack" and *koni najezdni* (кони наѡздни) = "foray with horses" demonstrate that the invasion could be done by affluent people who possessed horses and armed men, i.e. noblemen.

Noblemen's foray was very well known in the feudal epoch in German (*Reisa, Heerung*), Czech (*výboj*), Polish (*zajazd*,¹⁰ *invasio domus*) and Russian (наезд, грабеж)¹¹ law. Haughty noblemen did not want to appear in court, but rather with armed troops attacked villages of other noblemen, trying to charge debts.¹² Some examples can be found in Serbian law as well. Despot Stefan Lazarević, in the charter issued to the monasteries Tismany and Voditsa (1406), says that the monasteries are free from every noblemen's invasion (И да соу свободны ... и ѿ всаке наезде властелске).¹³ In the year 1401, Đurica Petrović, a citizen of the Ragusan Republic, sued to a court in Dubrovnik the nobleman Dumko Bobaljević, complaining that Bobaljević and his men attacked him with a sword and wanted to cut his head and seize his property (наѡаха на мене ... съ нунаци своими и тръгоше мача на мене, не би ни ми липьсало да ми главу одсече и вашъ добитакъ разаспе). Ten years later (January 1411) in the city of Trepča, Ivan Karuč, a Ragusan subject, wrote to the Doge and Community of Dubrovnik, complaining that Nikša Peščić (a Ragusan citizen as well) with his company attacked Karuč's house (наѡаха ми на кукю), plundered his property,

8 Novaković, *Zakonik*, p. 78; *Zakonik cara Stefana Dušana*, vol. I, p. 186; vol. II, pp. 134, 187, 250.

9 Taranovski, *Istorija*, vol. II, p. 119.

10 "Pan Tadeusz" ("Master Thaddeus"), an epic poem by the Polish poet, prose writer and philosopher Adam Mickiewicz (1798–1855), has a subtitle "Ostatni zajazd na Litwie" ("The Last Foray in Lithuania"). The author describes a nobleman's invasion from the year 1800.

11 See articles 10 and 11 of the "Novgorod Judicial Charter" ("Новгородская судная грамота"), *Памятники русского права* [Sources of Russian Law], ed. S.V. Yushkov, vol. II, *Pamyatniki prava feodalno-razdrobnoy Rusi, XII–XV vv.* [Sources of Feudal Divided Russia, 12th–15th Centuries], ed. A.A. Zimin (Moscow 1953), pp. 213 and 234.

12 Cf. Solovjev, *Zakonik cara Stefana Dušana*, p. 258.

13 Ed. Mladenović, *Povelje i pisma despota Stefana*, p. 352.

and plucked, beat and dishonored him (и куплу ми разграбише, а ме оскубоше и убише и окалаше).¹⁴

2 Contumacy

Contumacy (from Latin *contumacia* = firmness or stubbornness, from *contumax* = rebellious) is the stubborn refusal or intentional omission of a person who has been duly cited before a court to appear and defend the charge laid against him. In Serbian mediaval law this was called *pečat* (печатъ), literally “seal”, or *prestoј* (прѣстои). According to article 62 of the Code, all subjects of the Empire (except greater lords) were summoned with a seal. The seal was a symbol of State power, and disobedience of it was a crime against the judicial system. Already, the Žiča chrysobull wrote: “And if somebody refuses a seal [summons], that shall be punishable with a fine belonging to the King, and let the Archbishop take it” (Да ако не поиде по печати, то тѣзи да се љписѣю печаты љ крала, и да је љзима архиепископъ себѣ).¹⁵ *Pečat* as a fine for contumacy was mentioned by Saint George’s chrysobull (1300), the charter of Queen Helen referring to the village of Zator, near Kotor (1276–1308), Saint Stephen’s chrysobull (1314–1316)¹⁶ and the Dečani chrysobull (1330).¹⁷

The noun *prestoј* comes from the verb *prestoјati* (прѣстојати) = “to stand throughout”: because the other summoned party came to court, it stood waiting and “stood throughout”. *Prestoј* (contumacy) was mentioned for the first time in Saint George’s charter, among fines due to the Church (ни прѣстоја).¹⁸ The word means at the same time a crime of contumacy and a fine payable for it. In the same charter, we also read: “For contumacy, a Church villager has to pay 18 dinars ... And whosoever shall be summoned, and shall not come, shall pay for contumacy 18 dinars” (И чловѣкоу црьковномуу прѣстои .II. динарь ... И аце го позове инамо кто на соудъ да моу ѣсть прѣстои .II. динарь).¹⁹ Article 56 of Dušan’s Law Code, entitled “Of summoning lords” (ѿ позовоу властѣнскомь), orders: “And whosoever shall be summoned ... and shall not come ... he is at

14 Solovjev, *Odabrani spomenici*, pp. 190 and 194. Cf. R. Mihaljčić, “Najezda”, in *LSSV*, p. 427.

15 Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

16 Ibid., pp. 317, 326, 410, 465.

17 Edited by Ivić and Grković, *Dečanske hrisovulje*, p. 136.

18 *Prestoј* as a fine, due to the Church, was also mentioned in two of King Dušan’s documents: 1) charter to the monastery of Treskavac, promulgated after 1337 (ed. Novaković, *Zakonski spomenici*, p. 671, para. x), and 2) chrysobull for Htetovo monastery from 1343 (ed. M. Koprivica, *SSA* 13 [2014], p. 150).

19 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 317 and 328.

fault, and from that lord shall six oxen be taken" (и кто боудѣ позванъ ... и не прїиде ... да есть кривъ и прѣстои властѣлинъ, 6 воловъ).²⁰ This archaic penalty of six oxen was prescribed only for noblemen. What kind of punishment existed for other social classes, especially for commoners, we cannot find in the Law Code. It seems that the fine from Saint George's charter (18 dinars) was very well known, and the Code did not consider it necessary to repeat it.

3 Refusal of Judge's Envoy or Clerk (So-called *wtbъn*)

The Serbian monarchs wanted to protect the personal staff of the judges and to add dignity and security to the judicial service. So, refusal of a judge's envoy or clerk was called *otboj* or *odboj* (*wtbъn*, *odbъn*), from the verb *odbiti* = to refuse. To refuse a judge's clerk, who was executing his order, was a crime against the judicature, known already in the charters promulgated before Dušan's Law Code. However, the Saint George's, Saint Stephen's and Dečani charters mention *otboj* as one of the fines payable to the Church,²¹ but without specifying the essence of the crime.

Dušan's Law Code regulates refusal (*otboj*) in article 107: "Whosoever is found to have refused a judge's envoy or clerk shall be deprived of his property; all he hath shall be taken from him" (Кто се наиде отбѣнь соудина сокал'ника, или пристава, да се пл'ени, и да моу се вѣсе оузмѣ цю има).²² The interpretation of article 107 is aggravated by the fact that different transcripts do not use the same expressions. Prizren's text has *оубывь* (to kill or to beat in Burr's translation),²³ while all other manuscripts (including the oldest, the Struga transcript) have *wdбѣнь* or *отбѣнь* (to refuse).²⁴ The word translated as "judge's envoy" in Prizren's text is *сокал'ника* and in Struga's *соколанника*²⁵ = *sokalnik*, a type of commoner with unclear social status.²⁶ Accepting the interpretation of Stojan Novaković that a *sokalnik* is a cook or baker, Malcolm Burr translated the beginning of article 107 as follows: "Whoso shall beat the cook or officer", and gave the following explication: "Dušan's judges were itinerant, constantly trav-

20 Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 48; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

21 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 317, 326, 465; Ivić and Grković, *Dečanske hrisovulje*, p. 136. The amount of the fine was 18 dinars.

22 *Zakonik cara Stefana Dušana*, vol. II, p. 251; Novaković, *Zakonik*, p. 82.

23 *Zakonik cara Stefana Dušana*, vol. III, p. 128; Burr, "The Code of Stephan Dušan", p. 517.

24 Novaković, *Zakonik*, pp. 82–83.

25 *Zakonik cara Stefana Dušana*, vol. III, p. 128; vol I, p. 110.

26 See Chapter 5.

elling about the country, as Novaković comments, where inns were few and probably confined to the cities and towns, so there is nothing remarkable in their taking a personal cook with them, as well as their beadle. It was also a protection against poisoning.”²⁷ However, all other transcripts have *посъльника* or *посланика* (envoy) instead of *sokalnik*. Anyway, the general trend of Dušan's legislation is to promote the efficiency and independence of the justiciary, and article 107 in this way is quite consistent with articles 178 and 148.²⁸ Article 178, entitled “Of judge's writs” (Њ соудїинѣ книзѣ), orders: “If judges send their officer²⁹ or writ and any man disobey and repel the officer, then shall the judge send his writ to the prefects and to the lords in which province the disobedient party is, that these authorities execute the writ of the judge. And if these authorities do not so execute, let them be punished even as the disobedient ones” (Соудїе коуде послаю пристава, и книге свое, аще кто прѣчюне и вѣтъне пристава, да пишѣ соудїе книгоу кефалїамъ и властѣлымъ оу чини боудѣ дръжавѣ внизи прѣслоушници, да съверше за този власти цю пишѣ сѣдїе; аще ли не съверше власти, да се кажѣ како прѣслоушници).³⁰ Article 148 contains a similar provision, under the title “Of judges” (Њ соудїах): “If a Church, or a lord, or any other man in my Empire disobey the writ of my judges whom I appoint to judge in the land, or whatever they write concerning any brigand or thief, they shall all be punished as disobedient to my Majesty” (Соудїе коие царство ми положи по земли соудити; ако пишѣ за цю любо за гоусара и тата, или за коие любо вправданїе соудѣбно, тере прѣслоуша книгѣ соудїа царства ми, или црьковѣ, или властѣлинь, или кто любо чловѣкъ оу земли царства ми, тызи вѣси да се всоуде іако и прѣслоушници царства ми).³¹ It is clear that every man who refused to execute a judge's writ would be punished as disobedient to the Tsar.

27 Burr, “The Code of Stephan Dušan”, p. 517.

28 Not with article 111, as Novaković thought (*Zakonik*, p. 212). Cf. Taranovski, *Istorija*, vol. 11, pp. 123–124.

29 The word translated as “officer” is *pristav*. On *pristav*, see Chapter 26, section 6.2.

30 Burr, “The Code of Stephan Dušan”, p. 534; Novaković, *Zakonik*, pp. 138–139; *Zakonik cara Stefana Dušana*, vol. 111, p. 152.

31 Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 115; *Zakonik cara Stefana Dušana*, vol. 111, pp. 140–142.

Crimes against Public Peace and Order

Peace, tranquility, and order and freedom from agitation or disturbance are that invisible sense of security which every man feels so necessary to his comfort, and for which all governments are instituted. In Nemnjić's State there existed an estate society, based on immunity, i.e. exemptions, as from serving in an office or performing duties which the law generally requires other subjects to perform.¹ The most important immunity was exemption from paying taxes, established in favour of the Church, but noblemen had special privileges as well. Violation of any kind of immunity, in mediaeval Serbia, was considered as the first crime against public peace and order. Other crimes against public peace and order were: noblemen's violent measures against commoners, villager's reprisals, commoner's councils, and fugitive serfs.

1 Violation of Immunity Rights (ПОСИЛИЊЕ, НАСИЛИЊЕ, ЗАБАВА)

Violation of privileges that the sovereign gave to the Church, to noblemen, or to Ragusan merchants was called *posilije* or *nasilije* = violence² and *zabava* = disturbance.³ *Posilije* was mentioned in Saint George's charter, where we read: "And whosoever shall be found trying Saint George's villager by violence ... let him be cursed by God and all Orthodox and Sainted Tsars and Kings, and to pay a tariff of 100 perpers" (И КТО СЕ НАИДЕ СОУДИВЬ УЛОВЬКОУ СВЕТАГО ГЕВРГИНА ПОСИЛИЊЕМЪ ... БОУДИ НА НИЕМЪ КЛЕТВЪ БОЖИИ И ВСЕЪХЪ ПРАВОУВЪРНЫХЪ СВЕТЫХЪ ЦАРЬ И КРАЛЬ ... И ДА ПЛАТИ ОУ ЦАРИНОУ .Р. ПЕРЬПЕРЬ).⁴ According to Saint Stephen's charter, everyone who hunted on the monastery's manor using force has to give to the Church 12 oxen (КТО ЛИ СЕ УВЕРЬТЕ ПОСИЛИЊЕМЪ ЛОВЕ ДА ПЛАТИИ ЦРЬКВИ .ВІ. ВОЛОВЬ). In the next lines, the same term (*posilije*) was

1 See M. Ivanović, "Razvoj institucije imuniteta u srpskoj srednjovekovnoj državi do kraja vladavine kralja Milutina" ["Development of the Institution of Immunity in the Serbian Medieval State until the End of Reign of King Milutin"], *IC* 67 (2018), pp. 49–83.

2 Both terms are obsolete. In modern Serbian the word is *nasilje*.

3 On the meaning of the word *zabava* see Chapter 12, note 13.

4 Mošin, Ćirković, and Sindik, *Zbornik*, p. 326. The chrysobull of then-ex-King Dragutin to the monastery of Saint Stephen in Banjska mentioned only anathema for anyone who took something using violence (ПОСИЛИЊЕМЪ) from the monastery. *Ibid.*, p. 471.

mentioned two further times.⁵ So, the King protected both the judicial and economic immunity of the Church.

The word *nasilije* can be found in the oath of Ragusan Doge Johannes Dandulus (Жани Даньдоль) promising a peace and friendship to Serbian King Stefan Vladislav (1234–1235). Addressing the Serbian King, Johannes Dandulus said: “And if any violence happened to you and you refuge in our town” (И ако ти се згоди кое насилые и приѣѣгнеши љ градъ нашъ).⁶ King Milutin in his chrysobull to the monastery Gračanitza (1315–1321) says that he saw violence to the villagers of the Holy Virgin monastery (И видѣѣ кралевьство ми насиліе на людехъ Прѣсвѣтые Богородице).⁷ Telling the story of his reign, King Milutin in the chrysobull donating a house lot (*selište*)⁸ of Uliyar (15th century) narrates that his brother Stefan Dragutin came to him “asking help from the violence of godless men” (и любовію молитъ помощи мѣ емоу въ такового насиліа безбожнѣихъ).⁹ King Stefan Dečanski’s chrysobull to the Episcopacy of Prizren (April 1326) and King Stefan Dušan’s chrysobull for Htetovo monastery (1343) contain a general formula that monasteries are free from any kind of violation (да соуть оу всакои свободѣ въ всакого насиліа).¹⁰ Violation of monastery rights was considered as a crime against public peace and order, even as a crime against the State. This is clear from the text of King Stefan Dečanski’s charter to the monastery of Hilandar (6 September 1327), where we read: “And whosoever be found [to violate a monastery] let him pay 500 perpers and be treated as a traitor” (Кто ли се нагѣ ... да плати .ѣ. съѣ перперъ, и да ѣстъ невѣр’нь).¹¹

Dušan’s Law Code tries to prevent violation of both immunities, judicial and economic, in two articles. First, article 12 orders: “And laymen shall not judge clerical matters. And should any layman judge an ecclesiastical matter, let him pay 300 perpers. Only the Church shall judge [“ecclesiastical matters”, *casus*

5 Ibid., pp. 462 and 469.

6 Ibid., p. 134.

7 Ibid., p. 503.

8 On the meaning of the word *selište*, see Chapter 13, note 41.

9 Mošin, Ćirković, and Sindik, *Zbornik*, p. 537. The “godless men” are Bulgarian feudal lords Darman and Kudelin who were jointly ruling the region of Braničevo (today in Eastern Serbia) as independent lords. They regularly attacked Stefan Dragutin’s Syrmian Kingdom, using Tatar’s and Cuman’s mercenaries. The historical background of this charter was studied by S. Ćirković, “Biografija kralja Milutina u Ulijarској повељи” [“King Milutin’s Biography in the Uliyarska Charter”], in *Arhiepiskop Danilo II i njegovo doba, međunarodni naučni skup povodom 650 godina od smrti, Srpska Akademija Nauka i Umetnosti, naučni skupovi, knjiga LVIII, odeljenje istorijskih nauka, knjiga 17* (Belgrade 1991), pp. 53–68, especially p. 62.

10 Edited by S. Mišić, *SSA* 8 (2009), p. 18, and M. Koprivica, *SSA* 13 (2014), p. 151.

11 Edited by S. Mišić, *SSA* 3 (2004), p. 7.

spiritualis]" (И доуховномѣ дльгѣ, козмици да не сѣдѣ. кто ли се наиде въ козмики соудивъ црковномѣ дльгоу, да плати, ꙗко перперь. тѣмъ црковь да соудѣи).¹² Article 34 runs as follows:

And into my imperial estate ... the people of the Church shall not go, neither for mowing hay nor for ploughing, nor for vineyards, nor for any compulsory labour, small or great. From all compulsory labour my majesty exempts them, let them work only for the Church. And whosoever shall be found to have driven men of the Church¹³ into an imperial estate¹⁴ and disobey the law of my majesty, the goods of that owner shall be confiscated and he shall be punished.

И цю сѣ села мероп'шине, царства ми ... црковны людѣ да не гредоу оу мѣроп'шине, ни на сѣно, ни на вранѣ, ни на виноградѣ, ни на єдинѣ работѣ, ни на малѣ ни на великоу; въ вѣсѣхъ работѣ освободѣи царство ми; тѣмъ да работаю цркви; кто ли се наиде изыгнавъ метохію на мироп'шиноу, и прѣчию законъ царства ми, тѣзи властники да се распе и накаже.¹⁵

The object of this clause is to protect the Church against the enticing away of its labourers by other landowners. The article also conferred privileges of exemption of Church tenants from the obligations of compulsory labour.

Zabava (ЗАБАВА, ЗАБАВА) in Serbian mediaeval law means disturbance, interference, nuisance, hindrance, and the verb *zabaviti* (ЗАБАВИТИ) to disturb, to molest, to break peace or order. Disturbance (*zabava*) was a crime against public peace and order, and its perpetration could be on roads, market-towns and fairs. Provisions on disturbance were already present in the treaties with Dubrovnik: sovereigns from the Nemanjić dynasty wanted to secure freedom of movement and trade to their Ragusan commercial partners, and they prohibited any kind of disturbance. For example, in King Milutin's charter presented to the Republic of Dubrovnik (1282), we read: "Merchants can move along my

12 Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 16. *Zakonik cara Stefana Dušana*, vol. III, p. 102.

13 *Metochija*, a word of Greek origin (μετόχιον = a settlement), which meant a monastic estate.

14 *Meropšina* meant every village, settled by villagers (*meropsi*), belonging either to the Tsar himself or to any nobleman. Đuro Daničić, *Rječnik*, II, p. 105, translated *meropšina* as *terra quam tenent coloni* мѣропсини dicti, *operaque serva ab us praestanda*. See M. Blagojević, "Meropšine", in *LSSV*, pp. 397–398.

15 Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, p. 32; *Zakonik cara Stefana Dušana*, vol. III, p. 108.

Royal land freely, without any apprehension and disturbance" (Коупьци ихъ да си ходѣ по земли кралевства ми безъ боязни и безъ забаве, съ всакомъ свободомъ).¹⁶ According to King Stefan Dečanski's chrysobull to the Episcopacy of Prizren (1326), a perpetrator of the crime is the person "who wants to disturb someone and give battle to somebody" (Кто ли хоцѣ комуоу забавити или бои въздвигнѣть).¹⁷

One of the main duties of central government was to secure and guarantee freedom of movement and trade, as is clearly emphasized in articles 118, 119 and 120 of Dušan's Law Code. Article 118 orders: "No man, noble or other, may molest merchants who travel about the Tsar's dominions, nor rob them by force nor scatter their merchandise, nor take their money by force" (Трьгов'ци кои гредѣ по цареве земли да нѣсть вол'нь никои властѣлинь, или кои любо чловѣкъ забавити по силѣ; а или разбити коуплю, а динаре мѣ силомъ наврѣцїи). Article 119: "Merchants shall travel freely without hindrance in my dominion" (Трьгов'цїи да гредѣ свободно безабавѣ по земли царства ми). Article 120: "An Imperial customs officer may not hinder nor detain any man in order to sell his goods at a law price" (Цариникъ царевъ да нѣст вол'нь забавити, или задръжати кога чловѣка да мѣ коуплю продасть оу без'ценїе).¹⁸ The penalty for disturbance was a fine of 500 perpers: charter to the Episcopacy of Prizren reads "let him pay to me, the King, 500 perpers" (да плати кралевствуоу ми петъ сътъ перперъ); article 118 of the Code reads "Whosoever shall be found seizing or robbing their merchandise shall pay 500 perpers" (кто ли се наидѣ силомъ растоваривъ или развалѣвъ да плати, ѣ, сътъ перперъ).¹⁹ A much stronger penalty for any disturbance of Ragusan merchants was provided in Tsar Stefan Uroš's treaty with Dubrovnik (24 April 1357), where we read:

Whosoever from my noblemen or my courtiers in my Imperial dominions change this writ and my Imperial benevolence and disturb in any way Ragusans and prevent them to go on the market-towns, to buy and sell, or shall be found seizing their merchandise, he shall be treated as a traitor and let him pay sevenfold what he was owing, according to the Tsar's Law Code.

16 Mošin, Ćirković, and Sindik, *Zbornik*, p. 276. Cf. Chapter 7, section 1.

17 Edited by S. Mišić, *SSA* 8 (2009), p. 17.

18 Burr, "The Code of Stephan Dušan", pp. 519–520; Novaković, *Zakonik*, pp. 91–93; *Zakonik cara Stefana Dušana*, vol. III, p. 132.

19 *SSA* 8 (2009), p. 17; Burr, "The Code of Stephan Dušan", p. 519; Novaković, *Zakonik*, p. 91; *Zakonik cara Stefana Dušana*, vol. III, p. 132.

Кто ли ино Ѹчини вѣдъ властель царьства ми а или вѣдъ владѣщихъ въ земли царьства ми, и потвори сие записаниѣ и милость царьства ми, и забави цю дѣловчаномъ, да не продаю трыгове и кѣплю свою и да си кѣплю цю имъ трыбѣиѣ, а или имъ цю кто Ѹзме, да ми естъ невернь Ѹ неверно име, и да плати вьсе самосѣдмо цю имъ бѣде стрѣль, по законикѣ царьства ми).²⁰

The treaty refers to the last lines of article 30 of Dušan's Law Code ("And whosoever shall molest or damage anyone without judgment, let him pay sevenfold", ако ли оуѣвѣ безъ суда, или комѣ забави, да плати самосѣд'мо).²¹

2 Noblemen's Violent Measures against Commoners

In Serbian mediaeval society there existed a strong class struggle between noblemen, as the privileged social rank, and exploited commoners. Several articles of Dušan's Law Code attempt to limit this antagonism.

2.1 *Malfeasance of the Maintenance Right*

Under primitive economic conditions as existed in feudal society, it was very rare that State officials had salaries. When they were travelling on official duties, one of their privileges was a right to demand costless board and lodging from local inhabitants. The privilege was known from the Roman epoch as *des-census*;²² in mediaval Croatia it was called *zalaznina* or *zalaz*,²³ and in Serbia *priselica* (присѣлица). It was a heavy burden for villagers, very often followed by a nobleman's malfeasance—the doing of an act which is wholly wrongfull and unlawful. It happened that a lord, who goes around his dominion, would do evil to his serfs: they might plunder or even burns their homes by rancour. Dušan's Law Code attempts to restrain noblemen's wantonness, which could provoke commoner's resistance, promulgating article 57, entitled "Of maintenance" (Ѡ прѣцѣлицѣ) and containing a very strong penalty: "And if any lord be on maintenance and do wrong to any man by rancour, waste his land, burn his house, or do any other mischief, his holding shall be taken from him and another shall not be given to him" (Кои ѣ властѣлинъ на прѣцѣлицѣ; комѣ пизмомъ коѣ зло

20 Edited by M.A. Černova, *SSA* 10 (2011), p. 63.

21 Burr, "The Code of Stephan Dušan", p. 204; Novaković, *Zakonik*, pp. 28–29; *Zakonik cara Stefana Dušana*, vol. II, p. 106.

22 M. Rostovtzeff, *Gesellschaft und Wirtschaft im römischen Kaiserreich* (Leipzig 1931, reprint Aalen 1985), vol. II, p. 97.

23 Mažuranić, *Prinosi*, p. 1646.

Учини земли пленомъ, или коукиѣ пожеже, или кое любо зло Учини; такози тазн дръжава да мѹ се оузмѣ, а ина да не дастъ).²⁴

2.2 *Nobleman's Evil Doing*

In the first part of Dušan's Law Code, article 57 deals with the abuse of authority and hospitality on the part of lords when travelling on duty or some temporary service. In the second part of the Code, promulgated in 1354, article 142 speaks again on noblemen's evil doings toward villagers and prescribes a more severe penalty:

Of Lords [Ω властѣличикѣх]: Any lord, greater or less, to whom I have given land and towns, if any one of them be found to have seized villagers and people against the law of my Empire which I have enacted in my Council, let his estate be taken from him and all that damage which he has done, let him pay for from his own house and let him be punished even as a deserte.

Властѣлѣмъ и властѣличикѣмъ коимъ естъ дало царство ми землю и градовѣ; ако се кто ѿдъ нѣхъ вѣрѣте вѣпленивъ села и людѣи и затрѣвъ прѣзакон царства ми цю естъ царство ми оузаконило на съборѣ; да мѹ се оузмѣ дръжава; а ѿнѣзи цю боудѣ строуль да вѣсе плати ѿтъ свое коукиѣ, и да се каже како и прѣвѣгльць.²⁵

Dušan's policy was to administer the new provinces wisely and justly, so he sharpened the punishment for misdemeanour from mere confiscation to that of a deserter, which included mutilation.

In spite of this strict clause, noblemen often plundered villages and monasteries, instead of administering justly their domain. In the Greek charters of Serbian sovereigns we can find figurative expressions setting free monastery manors from noblemen's violence. For example in King Dušan's chrysobull for the Russian monastery of Saint Panteleimon on Holy Mountain (1348–1349), we read: "And nobody from kephale and tax collectors or anyone else in this land may do harm or damage to these manors, or plunder with greedy and rapacious hands, or do any other violation and oppression and demand" (καὶ οὐδεὶς τῶν κεφαλαιτικευόντων ἐν τῇ τοιαύτῃ χώρᾳ, ἢ τῶν τὰ δημόσια διενεργούντων,

24 Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, pp. 48–49; *Zakonik cara Stefana Dušana*, vol. 111, p. 114.

25 Burr, "The Code of Stephan Dušan", p. 525; Novaković, *Zakonik*, p. 109; *Zakonik cara Stefana Dušana*, p. 140.

ἡ τῶν ἄλλων ἀπάντων ἐπάξει ὅλως εἰς τὰ τοιαῦτα κτήματα κατατριβὴν καὶ ἐπήρειαν, ἡ χεῖρα πλεονέκτην καὶ ἄρπαγα, ἡ ἑτέραν οἰανδήτινα ἐπίθουσιν καὶ καταδυναστεῖαν καὶ ἀπαίτησιν).²⁶ Tsar Dušan's chrysobull to his Greek courtier George Phokopoulos (May 1352) says "that nobody from my Imperial lords, great or small, dare to enter his houses, or to plunder with greedy and unjust hands on his estates" (καὶ οὐδὲν ἔξωιν ἄδειαν οὐδεὶς τῶν ἀπάντων τῶν ἀρχόντων καὶ ἀρχοντοπούλων τῆς βασιλείᾳ μου ἢ ἐν τοῖς οἰκήμασιν αὐτοῦ εἰσελθεῖν ἢ πλεονεκτικὴν καὶ ἄδικον αὐτοῦ χεῖρα ἐπὶ τοῖς κτήμασι κινήσαι αὐτοῦ).²⁷ Dušan's half-brother Simon, in the chrysobull granting privileges and estates to his nobleman John Tzaphas Oursinos Doukas (January 1361), prohibits "that anyone dare to put a criminal and harmfully foot [plunder] on [Tzaphas' estates]" (πόδα κακωτικὸν ἢ ἐπιζήμιον).²⁸

3 Villagers' Reprisal

The intention of Dušan's Law Code was to secure peace and order in his Empire. As the Tsar protects commoners from noblemen's violent measures, at the same time he protects lords from the vengeance of villagers. The first case was provided by article 58, under the title "Of the Death of a Lord" (Ἐν τῷ θανάτῳ τοῦ βασιλέως): "If any lord who owns one village in a district or among districts should die and any damage be done to that village by fire or other cause, then shall the whole district pay for that damage" (Кои властелинь оумре а има једно село оу жоупѣ, или међу жоупами; цо се зло оучини томѣзи селом, пожегомъ или инимъ чимъ любем, вѣсѣ тоузи злобѣ да плати вколина).²⁹ So, the connection between articles 57 and 58 is clear: while article 57 punishes a lord who by rancour burns and plunders villagers' homes, article 58 provides a penalty for villagers who burn the village and palace of a hated lord. It could be possible that a nobleman with his guard pressed villagers, but they had no courage to revolt against him during his lifetime. However, when the nobleman dies and the manor remains without a heir and any protection, villagers could easily plunder his property. Collective criminal liability for a neighbourhood was provided for this crime.

The second part of the Code contains article 144 ("On fugitives",³⁰ Ἐν τῷ φεύγοντι), which represents a supplement to article 58, ordering: "If any lord, great

26 Solovjev and Mošin, *Diplomata graeca*, p. 1128.

27 Ibid., p. 180.

28 Ibid., p. 236.

29 Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 49; *Zakonik cara Stefana Dušana*, vol. I, p. 102; vol. III, p. 114.

30 "Of Those who go Abroad" in Burr's translation (p. 525).

or small, or any other man of my Empire be found as fugitive,³¹ and the neighbouring village and the country around arise and plunder his home and cattle which he has left, those who do so shall be punished as traitors to my Empire” (Ако ли се вѣрѣте властѣлинѣ, или властѣличикѣ побѣгльцѣ, и инѣ кто любо царѣства ми, тере оустанѣ на грабленіе вѣкол’нѣ села и жоупа на нѣговѣ коукю и на еговѣ добитѣкъ цю боудѣ вѣставилѣ; внизѣи кон този оучинѣ да се кажѣ како нѣвѣр’ ницѣи царѣства ми).³² So, article 58 provides for a quiet succession in the event of the death of a landowner and protects his property during the interval, while article 144 treats a case of a fugitive lord who was considered as a traitor.

4 Commoner’s Council

Article 69 of Dušan’s Law Code, considering the “Commoners’ Council” (Сѣборѣ сѣбровѣ), remains one of the most disputed. It runs as follows: “Commoners have no council. If any meet in council let his ears be cut off, and let the leaders be singed” (Сѣброва сѣбора да нѣстѣ; кто ли се вѣрѣте сѣбор’никѣ, да мѣ се оуши оурежѣ и да се вѣсмѣде поводѣчѣе).³³ Although being short this article opens several questions.

What is the essence of the crime, i.e. what is the meaning of the wording “Commoners have no council” (Сѣброва сѣбора да нѣстѣ)? Different hypotheses have been presented: a) commoners have no right to take part at State Council sessions (W.A. Maciejowski, N. Krstić); b) prohibition of county meetings (D. Alimpić); c) prohibition of all village assemblies (D. Lapčević); d) prohibition of tribal assemblies (T. Đorđević).³⁴ However, the right interpretation was given by Stojan Novaković. According to him article 69 was a practical police-measure, in order to prevent commoners’ conspiracies that may result in rebellions against noblemen.³⁵ His opinion has been accepted by the majority of modern scholars.³⁶ To reinforce Novaković’s point of view we shall point to the

31 “Fare abroad” in Burr’s translation (p. 525).

32 Burr, “The Code of Stephan Dušan”, pp. 525–526; Novaković, *Zakonik*, p. 111; *Zakonik cara Stefana Dušana*, vol. II, p. 206; vol. III, p. 140.

33 Burr, “The Code of Stephan Dušan”, p. 211; Novaković, *Zakonik*, p. 56; *Zakonik cara Stefana Dušana*, vol. II, pp. 188 and 246; vol. III, p. 118.

34 Solovjev, *Zakonik cara Stefana Dušana*, p. 230.

35 Novaković, *Zakonik*, pp. LI–LII.

36 A. Solovjev, “Sebrov zbor” [“Commoners’ Council”], *APDN* 34 (1928), pp. 170–178, and *Zakonik cara Stefana Dušana*, pp. 230–232; Taranovski, *Istorija*, vol. II, pp. 129–130; Radojčić, *Srpski državni sabori*, pp. 207–208; Janković, *Istorija*, pp. 84–86; Šarki, *Srednjovekovno srpsko pravo*, pp. 98–99.

provision of Byzantine law, already quoted,³⁷ that contains a ban on all assemblies of the people (τὸ συνάγεσθαι ὄχλον) without the Emperor's permission. There are similar provisions in the legislation of other feudal States, especially from Western Europe.³⁸

The historical sources do not contain information of any commoners' rebellion in mediaeval Serbia, but Dušan and his government knew everything about the anti-aristocratic uprising of the Zealots in Thessaloniki, during the Byzantine civil war of 1341–1347 (or Second Palaiologan War).³⁹

However, some charters demonstrate that commoners' councils held in the presence of State officials or noblemen were allowed. The Dečani chryso-bull, for example, says "that boundaries were fixed by judge Bogdan and the assembly of those villages" (а теџи мегіе оутеса Богданъ соудниа и с'боръ тѣх'зи селъ).⁴⁰ In some documents, written either in Serbian or in Greek, we find the wording "noblemen and *chora* assembled" (събраше се властеле и хора).⁴¹ The Greek word χώρα means land, county, but in this context commoners' councils (χωριῖται = villagers).

The second part of article 69 provides different penalties for participants and for leaders. The participants (*sabornik*, съборникъ) were to be punished by cutting off ears, while the leaders (*povodčija*, поводчиа), besides cutting off of

37 *Syntagma* Σ-II, ed. Ralles and Potles, pp. 449–450; ed. Novaković, pp. 476–477. Cf. above, "Crime of Treason".

38 For examples see Solovjev, "Sebrov zbor", pp. 170–177.

39 In 14th-century Europe there were several fierce insurrections by commoners: 1) 22 February 1358, uprising of the populace of Paris, led by Étienne Marcel, provost (prévôt) of the merchants of Paris under King John II of France, called John the Good (Jean le Bon); 2) the Jacquerie, a popular revolt by peasants (because the nobles derided peasants as "Jacques" or "Jacques Bonhomme"—"Jack Goodfellow", for their padded surplice, called a "jacque") that took place in the northern France in early summer 1358 during the Hundred Years War; 3) the Revolt of the Ciompi, a rebellion among unrepresented artisans, labourers and craftsmen (they did not belong to any guilds and were therefore unable to participate in the Florentine government), which occurred in Florence from 1378 to 1382; 4) the Peasants' Revolt of 1381 in England, led by Walter "Wat" Tyler, also during the Hundred Years War. It is disputable whether the Serbian aristocracy was informed on these uprisings.

40 Edited by Ivić and Grković, p. 99.

41 Inventory of Htetovo monastery property from the year 1343 (Solovjev, *Odabrani spomenici*, p. 129; Slaveva, Miljković-Pepel, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 289); King Dušan's *protagma* (πρόσταγμα) issued between September and December 1345, to Raïko, kephale of Trillisios and Brontos (Solovjev and Mošin, *Diplomata graeca*, p. 24); Document on litigation from the year 1376, concerning the boundaries in the region of Strumitza in North Macedonia (Solovjev, *Odabrani spomenici*, p. 170).

their ears, by singeing, as well. There have been several different interpretations regarding those two penalties.

What does the verb *urezati* (οὐρῆζατι) mean? Although the word *urezati* was already translated by Šafarik as *abschneiden*, *abgeschnitten sein* (to cut off),⁴² Voja Radovanović expressed the idea that *urezati* means *rovašiti* = cut (saw) into, score, nick, notch, incise, and not to cut off.⁴³ However, other translators of the Law Code accept Daničić's interpretation that *urezati* (οὐρῆζατι) means *deseare* (to cut off). As argument Daničić quotes five articles of the Code and a fragment from *The Life of Saint Simon*, written by the King Stefan the First Crowned, where the verb *urezati* has a meaning of *deseare*.⁴⁴

According to Aleksander Solovjev, the verb *urezati* (υπεζαμου) in modern Serbian is derived from *вѣрѣзати* = *in-sculpere*, while the old verb *οὐρῆζατι* means *abscindere*. For example, the Old Serbian version of the New Testament translates the wording from the Gospel according to Saint John: "Then Simon Peter having a sword drew it, and smote the high priest's servant, and cut off his right ear. The servant's name was Malchus" (Σίμων οὖν Πέτρος ἔχων μάχαιραν εἰλκυσεν αὐτήν, καὶ ἔπαισε τὸ τοῦ ἀρχιερέως δοῦλον καὶ ἀπέκοψεν αὐτοῦ τὸ ὠτίον τὸ δεξιόν· ἦν δὲ ὄνομα τῷ δούλῳ Μάλχος),⁴⁵ as *οὐρῆζα εμοῦ οὐχο* or *οὐρῆζα εμοῦ οὐχο*,⁴⁶ what corresponds to the Greek term ἀπέκοψε and Latin *abscidit*.⁴⁷

Much more confusion has been sown on the interpretation of the word *povodčija* (поводѣѣѣ). Šafarik, who disposed with only three transcripts, read from the Hodoš text *podvočije* (подвочиѣ) and from the Šišatovac copy *podočije* (подовчиѣ), and he understood those two terms as being in connection with the Serbian word *oči* (очи) = eyes, so he translated the final lines of article 69 as "let

42 Ed. Kucharski, *Antiquissima monumenta*, pp. 175, 197. Šafarik used the same term translating other articles of Dušan's Law Code which mention a verb *urezati* (articles 21, 53, 54, 162).

43 V. Radovanović, "Dve omaške u tumačenju Dušanova zakonika" ["Two Slips in Interpretation of Dušan's Law Code"], *Godišnjak Skopskog filozofskog fakulteta* 3 (1937), p. 151. The author did not give any philological explication.

44 Daničić, *Rječnik*, vol. III, p. 380. See the Chapter 18, section 2.

45 The Gospel according to Saint John 18, 10. Narrating the same story, Matthew and Luke do not mention the names. Matthew 26, 51: "And, behold, one of those who were with Jesus stretched out his hand, and drew his sword, and struck a servant of the high priest's and smote off his ear" (καὶ ἰδοὺ εἰς τῶν μετὰ Ἰησοῦ ἐκτείνας τὴν χεῖρα ἀπέσπασε τὴν μάχαιραν αὐτοῦ, καὶ πατάξας τὸν δοῦλον τοῦ ἀρχιερέως ἀφείλεν αὐτοῦ τὸ ὠτίον). Luke 22, 50: "And one of them smote the servant of the high priest, and cut off his right ear" (καὶ ἐπάταξεν εἰς τις ἐξ αὐτῶν τὸν δοῦλον τοῦ ἀρχιερέως καὶ ἀφείλεν αὐτοῦ τὸ οὖς τὸ δεξιόν).

46 Đ. Daničić, *Nikoljsko jevanđelje* [Gospel of Monastery of Saint Nicholas] (Belgrade 1864), pp. 64, 117, 264.

47 Solovjev, *Zakonik cara Stefana Dušana*, pp. 189, 232.

his eyebrows be singed" (*die Augenbraunen weggesengt werden*).⁴⁸ Daničić, in his *Dictionary from Serbian Literary Antiquities*, introduced the word *podočije* (подочіє, f. pl. *cilium*), translating it as "eyelashes" (*trepavice*, *тrepавице*).⁴⁹ The wording "let his eyelashes be singed" (*da se osmude trepavice*), according to Daničić's interpretation, was accepted by Novaković in his first edition of the Code⁵⁰ and in Zigelj's Russian translation (и да выжгутся ему рѣсницы).⁵¹ In his second edition of the Code (1898), Novaković wrote "i opaljen će biti ispod očiju" ("let him be singed under the eyes"),⁵² and in Burr's translation we read "let him be singed upon the face".⁵³ Novaković's interpretation was repeated in the Slovenian translation of the Code by Metod Dolenc (1929)—"nej ga osmode pod očmi". Writing a criticism of Dolenc's translation, Marko Kostrenčić made a very important correction: *povodčija* comes from the verb *povoditi* = *ducere*, and it means "leader" ("let the leaders be singed").⁵⁴ Undoubtedly this interpretation is correct, because in the best transcripts of the Code (Struški, Prizrenski, Atonski) we find the word повод'чїє, the plural from the term повод'чїа.⁵⁵ Kostrenčić's opinion has been accepted by the majority of modern scholars.⁵⁶

The legislation of other feudal States has a similar provision. For example, the Ragusan Statute (1272) provides punishment by death for leaders of conspiracies (*Qui fecerit compagniam per sacramentum vel per promissionem, quod probari possit, si fuerit caput et auctor ipsius companie, moriatur*).⁵⁷ An English Act from 1350 forbids all assemblies of villeins and punishes the abettors in the same way as perpetrators of high treason.⁵⁸

48 Ed. Kucharski, *Antiquissima monumenta*, p. 197.

49 Daničić, *Rječnik*, vol. II, p. 339.

50 S. Novaković, *Zakonik cara Stefana Dušana cara srpskog 1349 i 1354* (Belgrade 1870), p. 73.

51 Zigelj, *Zakonik Stefana Dušana*, Priloženija (Приложения), p. 43.

52 Novaković, *Zakonik*, p. 189.

53 Burr, "The Code of Stephan Dušan", p. 211. As we already wrote, Burr's translation was made from the text edited by Stojan Novaković in 1898 (Novaković's second edition of the Code). See Burr, "The Code of Stephan Dušan", p. 198.

54 M. Kostrenčić, "Dr Metod Dolenc, Dušanov zakonik (rec.)", *APDN* 29 (1926), p. 474.

55 Solovjev, *Zakonik cara Stefana Dušana*, pp. 232–233.

56 Taranovski, *Istorija*, vol. II, p. 129; Janković, *Istorija*, p. 84; Solovjev, *Zakonik cara Stefana Dušana*, p. 233; Šarki, *Srednjovekovno srpsko pravo*, p. 99.

57 *Liber statutorum civitatis Ragusii* VI, 2, *De hiis qui faciunt compagnias; Statut grada Dubrovnik*, p. 324.

58 D. Lapčević, "Sebri nisu imali pravo na sabore" ["Commoners Had No Right on Councils"], *Prosvetni glasnik* 29 (1929), p. 750.

5 A Fugitive Serf

Article 201 of Dušan's Law Code, preserved only in the late Rakovac transcript, commands: "If a serf flee anywhere from his lord to another land, or to the Tsar's, where his master find him, let him brand him and slit his nose and assure that he is again his, but let him take nothing from him" (Меропѣхъ ако побѣгне кѣде вѣт своего господара оу инѣ зем'ли или оу царевѣ, гдѣ га вѣрѣте господарь нѣговь, да га вѣмѣдѣи и нос мѣ рѣз'пори и ѣм'чи да є вѣпѣть єговь, а ино ницю да мѣ не оуз'мѣ).⁵⁹ It is interesting that a lord had no right to seize any of his villein's property.

In articles 140 and 141 ("Of receiving men", ѿ прїемани чловѣка), the Code proceeds to forbid the crime of receiving and harbouring fugitive serfs, and to bind them more irrevocably to the land. The perpetrator shall be punished "as a traitor" (да се каже ... како и невѣр'ныкъ),⁶⁰ meaning confiscation of property.⁶¹

Enticing and helping a villager to flee anywhere from his lord to another land was a crime called *provod*, *prevod* (прѣводъ, прѣводъ) or *prejem ljudski* (прѣѣмъ людьскыи).⁶² *Provod* was mentioned for the first time in King Stefan Dragutin's chrysobull to the monastery of Hilandar (1276–1281), as one of the so-called "King's (or Tsar's) debts" (*carski dugovi*, царьски дългови), i.e. cases which were in the sphere of King's Court of Justice (*casus regales*), or what was in English law called "pleas of the crown".⁶³ Dušan's Law Code uses the terms *prejem ljudski* (articles 103 and 183), but Saint Archangel's chrysobull (1348)⁶⁴

59 Burr, "The Code of Stephan Dušan", p. 539; Novaković, *Zakonik*, p. 146; *Zakonik cara Stefana Dušana*, vol. III, p. 280.

60 Burr, "The Code of Stephan Dušan", p. 525; Novaković, *Zakonik*, p. 109; *Zakonik cara Stefana Dušana*, vol. III, p. 138.

61 See Chapter 5, section 1.

62 Cf. the contemporary English Ordinance of Labourers (1349) for a similar attempt to prevent the migration of peasants in a time of labour shortage, which in England, at least, was due to the Black Death. The terrible mortality from this plague completely disorganized the manorial system, which had hitherto depended upon a plentiful supply of labour born and bred within the manor. The plague accelerated and intensified forces that were already at work, and the result was a very serious depletion of the labour supply. The population of the manor was no longer sufficient to work the lord's estates. Consequently lords began to compete among themselves for such free labour as was available. This tempted servile inhabitants of manors to leave their holdings and become hired labourers. See Plucknett, *A Consise History of the Common Law*, pp. 32, 322–323.

63 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 268, 269. In some charters *provod* or *prevod* designates transport as well. See King Milutin's charters to the monasteries of Saint George (1300) and Hilandar (1303–1331). *Ibid.*, pp. 317, 324, 376.

64 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 112.

and the treaty with Dubrovnik, exactly contemporary with the Code (1349),⁶⁵ return to the earlier expression *provod*. Article 93 of the Code, entitled “Of enticing men” (ѿ провоченіи чловѣка), forbids the wresting of somebody else’s villager by a nobleman: “Whosoever entices a neighbour’s man into another estate, let him repay sevenfold” (КТО проводи друужинааго чловѣка ѿ тоуждоу земли, да моу га даа самоседа’маго).⁶⁶ This means that a lord who captured somebody else’s serf had to hand him back and deliver six more villagers to the master of the kidnapped peasant. The manuscript gives an unclear reading: проводи ... ѿ тоуждоу земли (*provodi ... u tuždu zemlju*). *Toužda zemlja* (“another land”) in Dušan’s Law Code usually means foreign country, abroad,⁶⁷ but in article 93 it seems that it designates “another estate” (as Burr translated, following Novaković’s interpretation).⁶⁸

65 Edited by D. Ječmenica, *SSA II* (2012), p. 39.

66 Burr, “The Code of Stephan Dušan”, p. 216; Novaković, *Zakonik*, p. 73; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

67 According to the interpretation of Taranovski, *Istorija*, vol. II, p. 132, a nobleman could have a stake in helping a villager from somebody else’s manor to flee abroad and then capture him in a foreign country and bring him back to his estate. Plundering of foreign countries and estates, without a declaration of war, was a common occurrence in the 14th century.

68 Novaković, *Zakonik*, p. 202. Cf. Solovjev, *Zakonik cara Stefana Dušana*, p. 253.

Crimes against the Church and Religion

The most important task of every mediaeval monarch, especially the Emperor (Tsar), was to keep purity of the faith. “The Tsar must distinguished himself in Orthodoxy and piousness and be renowned in his favour before God.”¹ In a charter of 1346, in which he announced his legislative work, Stefan Dušan declared that he “made the laws that one should have in accordance with the benefection of the true Orthodox faith” (възыскахъ нѣкога добродѣтелиа и въсе истиніе и православніе вѣры, закони поставити іакоже подобаетъ имети).² Article 1 of the Code, entitled “Of Christianity” (О христїанствѣ), runs as follows: “First concerning Christianity. In this manner shall Christianity be purged” (Наипрво за христїанство. Сїимъ зїи въразомъ да се учисти христїанство).³ However, the Code does not prescribe a great number of crimes against the Church and religion, as might be expected from an Orthodox Tsar. Beyond any doubt, this is because the *Syntagma* of Matheas Blastares contains many provisions on that matter, and Dušan’s Law Code adds to them, following Byzantine ideals.

1 Renunciation of Orthodoxy

Matheas Blastares introduced at the beginning of his *Syntagma* as a prologue a short article entitled “On Orthodox Faith” (ΠΕΡΙ ΤΗΣ ΟΡΘΟΔΟΞΟΥ ΠΙΣΤΕΩΣ, О ВѢРѢ ПРАВОСЛАВНОЙ).⁴ The article starts with the Announcement of the First Ecumenical Council: “We believe in one God” (Пръваго събора слогъ. Вѣрѣю въ єдино҃го Бога).⁵ After that Matheas Blastares exposes the first rule of the Second Ecumenical Council, the sixth and seventh rules of the Third Ecumenical Council, the first rule of the the Sixth Ecumenical Council, the first and second rules of the Holy Community Carthagine Council⁶ and a definition of

1 See Chapter 8, section 3.

2 Novaković, *Zakonik*, p. 5; *Zakonik cara Stefana Dušana*, vol. III, p. 430.

3 Burr, “The Code of Stephan Dušan”, p. 198; Novaković, *Zakonik*, p. 7; *Zakonik cara Stefana Dušana*, vol. III, p. 98.

4 Ed. Ralles and Potles, p. 46; ed. Novaković, p. 48.

5 Ed. Novaković, p. 48. Greek text does not have this announcement.

6 The Councils of Carthage were Church synods held during the 3rd, 4th, and 5th centuries in the city of Carthage in Africa. Matheas Blastares refers to the Council of 419. All canons formerly made in the 16 Councils held in Carthage, one at Milevis, and one at Hippo, that

Christian, taken from secular laws (Νόμοι, Ζάκονи): “A Christian is one who believes in one God, in the same nature of Father, Son and Holy Spirit. The one who thinks differently, is a heretic” (Χριστιανός ἐστὶν ὁ πιστεύων μίαν εἶναι θεότητα, ἐν ἴσῃ ἐξουσία, τοῦ Πατρὸς καὶ τοῦ Υἱοῦ καὶ τοῦ ἁγίου Πνεύματος· ὁ δὲ παρὰ τὰ εἰρημένα δοξάζων αἵρετικὸς ἐστίν, Χριστιανὶνὶν κесѣ вѣроуѣнѣдино быти божество въ равнѣ власти отца и сына и свѣтаго доуха; чрѣсъ реченаа же славен, еретигъ есѣтъ).⁷

At the beginning of Chapter A-1 Matheas Blastares put the title “On those who renounced of this chaste Christian faith and on how to accept back those who repented” (Περὶ τῶν ἀρνησαμένων τὴν ἀμώμητον ταύτην τῶν Χριστιανῶν πίστιν, καὶ ὅπως τοὺς μεταμελομένους τούτων προσίσεσθαι δεῖ, Οὐ τωρὶ σὴνιχъ се не порогъ нѣ се е христѣанъ сѣнѣ вѣры, и како раскадавшихъ се сѣхъ приѣмати подобиѣтъ).⁸ After extensively exposing the opinions of the Apostles and Church Fathers, Matheas Blastares finishes Chapter A-1 with two laws concerning the most important crime against religion—renunciation of Orthodoxy. The first law says that those who accepted Holy Baptism and in spite of that maintain Hellenic (pagan) customs are to be punished by death (Οἱ ἀξιωθέντες τοῦ ἁγίου βαπτίσματος, καὶ ἅλιν ἑλληνίζοντες, ἐσχάτῃ τιμωρία ὑπόκεινται, Сподобльши се свѣтаго крыштенїа, и пакы елинъ ствоуѣштен, послѣднемѹ томаїенїю подобѣтъ). According to the second law, those who renounced the Orthodox faith and became heretics shall be deprived of full legal capacity: they may not either dispose with their property by a will nor donate it, nor acquire anything on the basis of an agreement or not (οὐ δύνανται διατίθεσθαι, ἢ δωρεῖσθαι, οὔτε ἐκ διαθήκης, οὔτε ἐξ ἀδιαθέτου λαμβάνειν τι δύνανται, не могуѣтъ завѣштвавати се, рекъше дѣтатъ сати, ниже даровати, ниже отъ завѣта ниже безъ завѣта приѣмати что могуѣтъ).⁹

At the end of the Chapter I-4, entitled “On that, how not to communicate with Jews” (Περὶ Ἰουδαίων, καὶ ὅτι μετ’ αὐτῶν κοινωνίαν ὅλως ἔχειν οὐ δεῖ, Οὐ γουδεиχъ іако съ ними обѣштенїа имѣти отнѹгъ не подобѣѣтъ),¹⁰ Matheas Blastares

were approved of, were read, and received a new sanction from a great number of bishops, then met in the synod of Carthage. This collection of canons was often called the Code of Canons of the African Church.

7 Ed. Ralles and Potles, p. 49; ed. Novaković, p. 51.

8 Ed. Ralles and Potles, p. 49; ed. Novaković, p. 51.

9 Ed. Ralles and Potles, p. 57; ed. Novaković, p. 59. Cf. *Procheiron*, xxxix, 33 et 34; *Cod. Iust.* 1, 5, 22, a law promulgated in 531, by Emperor Justinian: *Divinam nostram sactionem, per quam iussimus neminem errore constrictum haereticorum hereditatem vel legatum sive fideicomissum accipere, etiam in ultimis militum voluntatibus locum habere praecipimus, sive communi iure sive militari testentur.* Cf. 1, 7, 3 (*Imppp. Valentinianus, Theodosius et Arcadius A.A.A.*, a. 391) et 1, 7, 4 (*Impp. Theodosius et Valentinianus A.A.*, a. 426).

10 Ed. Ralles and Potles, p. 308; ed. Novaković, p. 326.

mentions a case of dissuasion of Christianity, which is similar to renunciation: "If a Jew captures and circumcises a slave who is Christian or catechumen,¹¹ or has the impertinence to deprave a Christian way of thinking, he should be punished by death" (Ἐὰν Ἰουδαῖος Χριστιανὸν ἢ κατηχούμενον ἀνδράποδον κτήσεται, καὶ περιτέμῃ, ἢ τολμήσῃ τινὸς διαστρέψαι χριστιανικὸν λογισμόν, κεφαλικῶς τιμωρεῖσθω, Ἀσπτε Юудеиъ Христїанина или оглашен'наго раба с҃тежитъ и оерѣ-жетъ, или дрѣзнетъ ко развратити христїан'скыи помысль, главнѣ да томимъ боудетъ).¹²

2 Heresy

Heresy (αἵρεσις, *іересѣ*, literally "sect, school") is an opinion or doctrine contrary to Church dogma. As a term it was used by the Church Fathers to designate a sectarian or dissident teaching, sometimes that of pagans or Jews but mainly within Christianity. In mediaeval law, heresy was an offence against religion, consisting not of total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. The *Codex Iustinianus* already had a long chapter, entitled *De Haereticis et Manichaeis et Samaritis*, containing 22 laws against heretics, starting from Emperor Constantine (a law from 326) and finishing with Emperor Justinian (a law from 531).¹³

The *Procheiron* contains several laws against heathens, Manichaeans¹⁴ and Donatists¹⁵ and generally against all persons who "teach impious dogmas" (Οἱ διδάσκοντες τὰ ἀσεβῆ δόγματα). The laws threaten all those persons with capital punishment and confiscation of property. The children of pagans and heretics can inherit the property of their parents, but only if they accept Orthodoxy.¹⁶

11 In ecclesiology, a catechumen (from Greek κατηχούμενος, "one being instructed") is a person receiving instruction from a catechist in the principles of the Christian religion with a view to baptism.

12 Ed. Ralles and Potles, p. 310; ed. Novaković, p. 328. Cf. *Procheiron*, xxxix, 31 et 32; *Epanagoge*, xl, 33 et 34; *Cod. Iust.* I, 10, 1.

13 *Cod. Iust.* I, v, 1–22.

14 Manichaeanism was a system of belief formulated by the Persian religious leader Mani (Μάνης). It was uncompromisingly dualistic (in which there appear two original principles fundamentally irreconcilable and opposed to one another), and grew out of Zoroastrianism.

15 Donatism, named after its primary teacher Donatus, is a rigorist sect that developed within the African Church in the early 4th century in the aftermath of the Great Persecution.

16 *Procheiron*, xxxix, 27–30, ed. Zepos, vol. II, p. 219.

Matheas Blastares' *Syntagma* has a very detailed Chapter A-2, under the title "On heretics and how those who convert from heresy should be accepted" (Περὶ αἵρετικῶν, καὶ ὅπως χρή δέχεσθαι τοὺς ἐξ αἱρέσεων ἐπιστρέφοντας, Ο ἱερετικῆς καὶ κακο ποδωβαίης πρηνεματι иже отъ ереси овраштаюштіиъ се).¹⁷ After exposing numerous characteristics of different heresies, the author quotes a few secular laws, almost taken verbatim from the *Basilika*. Various imperial laws (Καὶ παρὰ διάφορων δέ γε βασιλικῶν νόμων, И отъ раличныиъ же царскыиъ законъ) forbid heretics from inheriting either estates of bishops and clerics, or of common Christians, even being their children. Children of heretics that became Christians have the right to claim a dowry.¹⁸

- "Heretics cannot serve in the army forces nor become imperial dignitaries nor be teachers nor ordain (to lay hands on) nor participate in processions" (ἀλλὰ καὶ μηδεμίαν στρατείαν ... μῆτε ἀξιωματικούς γίνεσθαι, μὴ διδάσκειν τούτους, μὴ χειροτονίας ποιεῖν, μὴ λιτανεύειν, нь ниже едино воинство ... ниже сановникомъ быти ни оучити симъ, ни роукъвъзложеніа творити ни съ литією ходити).¹⁹
- "If a Manichaeon lives in any Byzantine city, his head shall be cut" (Μανιχαῖος, εἰ ἐν Ῥωμαϊκῷ τόπῳ ὀφθεῖν διάγων, ἀποτεμνέσθω, Μανιχει, аште ѡвигѣ се въ гръчьскомъ мѣстѣ живѣи, да оуѣвкнетъ се).²⁰
- "Montanists (Μοντανισταί, also called Kataphrygians)²¹ may not have in Constantinople any person, called by them a Patriarch or cleric; they may not serve the forces within the City [Constantinople], or organize common feasts or buy a slave" (Μοντανισταὶ ἐξαιρέτως μηδένα τῶν παρ' αὐτοῖς καλουμένων Πατριάρχων ἢ κληρικῶν ἐντὸς ἐχέτωσαν Κωνσταντινουπόλεως· καλυέσθωσαν δὲ καὶ ἐντὸς αὐτῆς στρατεύεσθαι, ἢ συσσίτια ποιεῖν, ἢ ἀνδράποδα ἐμπορεύεσθαι, Μον'τανіасте изреднѣе ниединоного отъ иже отъ ниъ глаголемыиъ патрїар'хъ или клирикъ въоуѣтъ да имоуѣтъ Кон'стан'тинна града; да възбраніаютъ же се и въоуѣтъ сего воевати, или гост'би въоуѣтъ сего творити междуу собою, или роба коуповати).²²
- "A heretic is not to testify against an Orthodox" (Αἵρετικὸς κατὰ ὀρθοδόξου μὴ μαρτυρεῖτω, Ἑρετικъ на православнаго да не свѣдѣтъ ѡ'ε'творюетъ).²³

17 Ed. Ralles and Potles, pp. 57–75; ed. Novaković, pp. 59–78.

18 Iust. *Novella* CXV, 14–36; *Basilika* xxxv, 8.

19 *Basilika*, I, 1, 22.

20 *Basilika*, I, 1, 29.

21 Heretics called Montanists were followers of a certain Montanus who preached in Phrygia in the 2nd century. Their theology did not differ substantially from orthodoxy, although some Church Fathers accused the "thick-witted Montanist" of teaching the doctrine of the identity of the members of the Trinity.

22 *Basilika*, I, 1, 33.

23 *Basilika*, I, 1, 28.

- “Wives of heretics should be denied the legal privileges granted to Orthodox consorts” (Ἐκβαλλέσθωσαν δὲ καὶ αἱ αἵρετικαὶ γυναῖκες τῶν δεδομένων προνομίων ταῖς ὀρθοδόξοις, Да измѣтаются же се и еретическыѣ жены даимыи хъ прѣдъ оу законънымъ ихъ обычаи православнымъ женамъ). “They should not have an advantage over previous lenders of their husbands, as the Orthodox wives have, in spite of the largeness of their dowry and gifts before marriage and on account of marriage” (οὐ γὰρ περὶ τὴν ἰκάνωσιν τῆς προικὸς αὐτῶν καὶ τῶν προγαμιαίων δωρεῶν προτιμηθήσονται τῶν προτέρων δανειστῶν τοῦ ἀνδρὸς, ὥσπερ αἱ ὀρθόδοξοι, не бо о навръшенїи прикїе ихъ и прѣдбращныхъ даровъ прѣдъ почитоутъ се пръвѣшихъ дльжники мѹужа іакоже православныѣ). “We allow heretics to be buried according to the law” (Ταῖς νομίμοις γε μὴν τοὺς αἵρετικοὺς ταφαῖς παραδίδοσθαι συγχωροῦμεν, Законнымъ погребенїемъ еретикомъ прѣданъномъ бывати праштаемъ).²⁴

Testimonies on the existence of heretical movements in mediaeval Serbia are fragmentary and contain many lacunae, although the *Nomokanon* of Saint Sabba (1219) in three chapters exposes a long list of heresies, quoting the writings of the Church Fathers: Chapter 61, *Panarion* (Πανάριον, literally “medicine-chest”), a very large compendium of the heresies written by Saint Epiphanius, bishop of Salamis, Cyprus (Ἐπιφάνειος Κύπρου, c. 310/320–403); Chapter 62, *Story of Calumniators of Christians*, Three Writings (*Antirrhetici*) referring to the refutation of iconoclasm, written by Nikephoros I (Νικηφόρος Α', 758–828), Ecumenical Patriarch of Constantinople (from 12 April 806 to 13 March 815) and a treaty *More on Heresies and Heads of Heresies*, written by Sophronius I (Σωφρόνιος Α' Ἱεροσολύμων), Patriarch of Jerusalem (634–638); Chapter 63, Writing of Timothy (Τιμόθεος), presbyter (πρεσβύτερος) of the Great Church of Constantinople, to John (Ἰωάννης), presbyter and treasurer of the Holy Virgin Church in Chalkeopratie, *On Heretics who Join to Christian Faith*.²⁵ However, those writings, taken from the Holy Fathers, do not reflect the real situation in mediaeval Serbia.

The first information on the existence of any heresy in mediaeval Serbia can be found in the *Life of Saint Simon*—a biography of Stefan Nemanja, written by his son and successor King Stefan the First Crowned. According to King Stefan's story “one of his [Nemanja's] true-believing soldiers came to him, and fell on his knees, and with gentleness and great humbleness told to him ... that the evil faith and cursed heresy is already striking root in your State” (Пришъдъшоу же єдинѹмоу ѡтъ ѹравоєѣрныхъ воинъ єго, и поклонъ колѣнъ свои съ ѹмилениємъ

²⁴ *Basilika*, IV, 1, 34. *Syntagma*, ed. Ralles and Potles, pp. 74–75; ed. Novaković, pp. 77–78.

²⁵ Ed. Petrović, pp. 354b–394a.

и смѣрениемъ многомъ глаголаше ему ... еже нелюбца ти вѣра и трыклетаѣа ересь, юже оуѣкорѣниаетъ се въ владычествѣ твоѣмъ). Stefan Nemanja "as soon as he knew that odious and damned heresy took roots in his State, called without hesitation his Archiereus Jephthimios and monks with their superiors, and honourable priests, and his lords, great and small" (Си же прѣподобны светы мон господинь ни мали зак'снѣвъ, скоро призвавъ своего арх'иереа и ев'димиа глаголема и чрь'це съ игоумени своими и чьстьны иереѣ, стар'це же и вел'моу же своеу вѣт' мала и до велика ихъ).²⁶ During a session of the Council, a nobleman's daughter married to a heretic was brought as a witness. After consulting his lords, spiritual and temporal, Nemanja decided to send against the heretics his "glorious armed forces" (посла на нѣ въвроуживъ вѣт' слав'ныхъ своихъ):

Some of them [the heretics] were burned, the second were punished by different penalties, and the third were deprived of their property; their homes and their estates were confiscated and distributed to the leprous and poors. Their teacher and superior was punished by cutting off the tongue in his throat, because he does not confess Christ, Son of God. And he put to the torch his satanic books, and exiled him [heretic teacher and superior] ... And he [Nemanja] eradicated completely this damned religion, not to be mentioned in his State.

и вѣвниихъ ижде не и друугыхъ казнѣми различными показа иныхъ вѣземльствѣи вѣт' владычествѣа своего, и домовѣ ихъ и имѣниа ихъ. в'се съвѣскоупивъ раздраѣа прокажен'нымъ и ницинимъ. оучителю же и начел'никоу ихъ языкъ оурубза оу грѣтани его, не исповѣдаючи Христа сына Божиа. и книгъ его, нечъ стивинѣ иждег' и того въ из'гнаниѣ створи ... и вѣноудъ искорѣвнии проклетоую тоу вѣроу, ѣакоже ни поменовати се ѣи вѣт'ноудъ въ владычествѣ его.²⁷

Although this testimony of our hagiographer can be considered trustworthy, questions arise: first, which heresy does the author refer to? The fact is that King Stefan the First Crowned neither mentioned a name nor described the teaching of any existing heresy of that epoch. However, knowing the religious circumstances in the Balkans, the majority of historians think that the heretics mentioned in *The Life of Saint Simon* were Bogomils (Serbian Cyrillic

26 Ed. Jovanović, p. 32. As we have already noted (Chapter 9, section 3.2), this assembly was considered as the first State council held in mediaeval Serbia. However, the exact date of the holding of the council remains unknown.

27 Ed. Jovanović, pp. 34, 36.

Богомили or *Богумили*, literally “dear to God”, from Slavonic *Bog*, *Богъ* = God, and *mil*, *милъ* = dear).²⁸

Second, from a legal point of view, the much more important question is: why were some of the heretics burned (punished by death), while others were punished by confiscation of their property? What was their guilt, in criminal law that quality which imparts criminality to a motive or act and renders the person amenable to punishment? Some heretics were punished, as our hagiographer says, “by different penalties”, but of what type they were—corporal or pecuniary (fines)? Finally, were the heretics prosecuted or not? However, as we deal with a narrative source, we must accept the fact that the answers on these questions will remain unknown.

It seems that Nemanja’s energetic action against the heretics successfully eradicated the Bogomils, and after that they did not represent a real danger in Serbia. Theodosios, the biographer of Saint Sabba, testifies that the Serbian Archbishop and his brother King Stefan the First Crowned punished heretics only by exile.²⁹ However, the situation changed in the 14th century when Ser-

28 Bogomilism was a Christian or dualistic sect founded in the First Bulgarian Empire by the priest Bogomil during the reign of Tsar Peter I in the 10th century. It most probably arose in what is today the region of Macedonia. The Bogomils called for a return to what they considered to be early spiritual teaching, rejecting the ecclesiastical hierarchy, and their primary political tendencies were resistance to the State and Church authorities. This helped the movement spread quickly in the Balkans, gradually expanding throughout the Byzantine Empire and later reaching Kievan Rus', Bosnia (“Bosnian Church”), Dalmatia, Serbia, Italy and France (Cathars). The Bogomils were dualist and Gnostics in that they believed in a world within the body and a world outside the body. They did not use the Christian cross, nor build churches, as they revered their given form and considered their body to be the temple. This gave rise to many forms of practice to cleanse oneself through purging, fasting, celebrating and dancing. The Bogomils are identified with Messalians in Greek and Slavonic documents from the 12th–14th centuries. The *Syntagma* of Matheas Blastares (Chapter A-2), for example, says that Bogomilian heresy is a part of Messalianism and that Bogomils refer to themselves like this (‘*Ἡ δὲ Βογομιλίων αἵρεσις ... μέρος οὖσα τῶν Μασσαλιανῶν; ΒΟΓΟΜΙΛ’ΣΚΑΙΑ* же ересъ ... честь соушти отъ МАСАЛІАН’СКІЯНЕ ... БОГОУМИЛИ САМИ СЕ НАРИЦАЮШТЕ. Ed. Ralles and Potles, p. 66; ed. Novaković, p. 69). On Bogomilism, see F. Rački, *Borba Južnih Slovena za državnu neodvisnost. Bogomili i patareni* [Struggle of South-Slavs for State Independence. Bogomils and Patarenes] (Belgrade 1931), pp. 337–599; D. Obolensky, *The Bogomils. A Study in Balkan Neo-Manichaeism* (Cambridge 1948); A. Solovjev, “Svedočanstva pravoslavnih izvora o bogomilstvu na Balkanu” [“Testimonies of Orthodox Sources on Bogomilism in the Balkans”], *Godišnjak društva istoričara Bosne i Hercegovine* 5 (1953), pp. 1–103; D. Dragojlović, *Bogomilstvo na Balkanu i u Maloj Aziji, II. Bogomilstvo na pravoslavnom Istoku* [Bogomilism in the Balkans and in Asia Minor, II. Bogomilism in the Orthodox East] (Belgrade 1982); S. Ćirković, “Bogomili, Bogumili”, in *LSSV*, pp. 51–52.

29 Ed. Daničić, p. 113.

bian monarchs conquered Macedonia, a cradle of heresy, and heretical danger became actual again. The heretics are referred to as *Babuni* (БѢДНИ, singular = БѢДНИНЬ), which originally meant superstition, superstitious person (Common Slavic БѢОНЬ, БѢОУНЬ, БѢОНА). The word was for many years a puzzle.³⁰ It is now known that *Babuni* is another name for Bogomils; it occurs in the *Nomokanon* of Saint Sabba, where we find a heading 42, “On Messalians,³¹ who are now called Bogomili–Babuni” (О МАСАЛИАНѢХЪ ИЖЕ СΟΥТЬ НЫНѢ ГЛАГОЛЕМИ БОГОМИЛИ, БѢОУНИ).³²

An inscription from 1329 testifies that *Babuni* were present in great numbers in 14th-century Serbia. The text says that King Stefan Dečanski “sent his by God given son, Crown Prince [so-called “Young King”] Stefan [Dušan] against impious and foul *Babuni*. And he [Stefan Dušan], with the help of God and the great army, won a battle and shed a lot of blood and captured innumerable heretics” (И сына своего Богомъ дарованнаго Стефана нарече да ѣ младый по немъ крааль, и посла его на безбожныѣ и поганныѣ бѣоуны. Онъ же шѣдъ съ помощию съ многы вои створи побѣдоу на нихъ, и многіе крѣви пролиа, и безчисльныѣ плѣни).³³ In

30 Scholars have presented different opinions concerning the origin of the word *Babuni*. The majority think that the term comes from the old expression for superstition, or from *Baba Yaga*, a Slavonic supernatural being who appears as a deformed or ferocious-looking old woman. At the same time the word means “midwife”, “sorceress” or “fortune teller”. Beside Slavonic languages, such as Serbian, Croatian, Russian, Ukrainian, Polish and Chech, the word is known in Hungarian and Romanian as well. Šafarik translated *Babub* as *Zauberer* (magician, sorcerer, wizard) and put it in connection with the Hungarian word *babonaság* = magic, sorcery, witchcraft (what is, according to him, a loan-word from Slavonic languages) and Polish *zabobon* = superstition (Kucharski, *Antiquissima monumenta*, p. 186). According to other views it could come from the libertine Christian Gnostic sect of Asia Minor called *Borborians* or *Borborites* (Greek Βορβοριανοί, from the Greek word βόρβορος = mud) or the Semitic word *baba* (in Serbian *baba* means grandmother). Toponyms which retain the name *Babuni* include the River *Babuna* and the mountain of the same name in North Macedonia. See S. Ćirković, “Babuni”, in *LSSV*, pp. 27–28.

31 Messalians (Μεσσαλιανοί, from Syriac *mšlān*, “praying people”), also termed Euchitai, formed an ascetic and pietistic movement, probably originating in Mesopotamia in the 4th century before spreading to Syria, Egypt, and Asia Minor. The Messalians never formed an institutionalized sect, nor did they develop any doctrine or create a hierarchy. They expressed the feelings of radical groups within Christianity; they believed that a demon is encamped in man’s soul and that neither baptism nor other sacraments suffice to expel him; only “baptism of fire” or spiritual purification can liberate men from the power of evil. See T.E. Gregory, “Messalianism”, in *ODB*, pp. 1349–1350. However, Messalians cannot be identified with Bogomils.

32 Ed. Petrović, p. 205b; ed. Petrović and Štavljanin-Đorđević, p. 602.

33 Stojanović, *Stari srpski zapisi i natpisi*, vol. 1, p. 25. According to the author it was people

spite of the “great victory” of the “Young King”, the *Babuni* remained a real danger for an Orthodox Tsar. Profoundly aware that the victory from his youth did not completely repress the *Babuni*, Tsar Dušan introduced in his Code two articles regarding heretics:

Article 10, entitled “Of heretics” (Ω еретице):

And if any heretic be found living among Christians, let him be branded on the face and driven forth. And whosoever shall harbour him, he too shall be branded.

И КТО СЕ ВБРЪТЕ ЕРЕТИГЪ, ЖИВЪ ВЪ ХРИСТІАНЪХЪ, ДА СЕ ЖЕЖЕ ПО ВБРАЗЪ, И ДА СЕ ПРОЖЕНЕ; КТО ЛИ ГА ИМЕ ТАИТИ, И ТЪЗЫ ДА СЕ ЖЕЖЕ.³⁴

Article 85, entitled “Of heretical utterance” (Ω речіи бабоуи’скои):

Whosoever utters heretical words,³⁵ if he be noble let him pay 100 perpers; and if he be a commoner, let him pay 12 perpers and be flogged with sticks

КТО РЕЧЕ БАБОУИ’СКОУ РЕЧЬ, АКО БОУДЪ ВЛАСТЕЛИН ДА ПЛАТИ, Р, ПЕРЬПЕРЬ; АЩЕ ЛИ БОУДЕ СЕБРЬ ДА ПЛАТИ, ВІ, ПЕРЬПЕРЬ, И ДА СЕ БІЕ СТАПІИ).³⁶

Interpretation of these two articles shows that the Tsar’s goal was not only to punish heretics but to prevent the Bogomil’s propaganda as well. Even the Code did not use the term Bogomils: article 10 says simply heretics and article 85 *Babuni*.

34 Bosnia who were responsible for the demolition of Saint Nicholas’ monastery in the county of Dabar (Serbian Cyrillic *Дабар*, part of the Principality of Zahumlje, later Hum). Burr, “The Code of Stephan Dušan”, p. 200; Novaković, *Zakonik*, p. 14; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

35 The expressions translated as “heretical utterance” and “heretical words” are in the original text *babunska reč* = babun’s word. Šafarik, who thought that *Babub* meant *Zauberer* (sorcerer), translated the title of article 85 as *Von zauberischer Rede* and later “Wer zauberische Reden ausstößt” (Kucharski, *Antiquissima monumenta*, p. 186). His interpretation was accepted by W.A. Maciejowski, who translated the first sentence of article 85 as “Kto ozarodziejskie wymania słowa czarując” (*Historia*, vol. VI, pp. 305–385). See also M. Petrović, “Babunska reč u Zakoniku cara Stefana Dušana 1349 i 1354” [“Babun’s Word in the Law Code of Tsar Stefan Dušan 1349 and 1354”], *Arheografski prilozi* 25 (2003), pp. 143–161.

36 Burr, “The Code of Stephan Dušan”, p. 214; Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. I, pp. 106 and 184; vol. III, p. 122.

Branding on the face, prescribed by article 10, meant that a heretic got a brand (stamp, stigma) on his cheek, and after branding he had to be exiled. In case he wanted to come back it would be very simple to recognize him. The same penalty was regulated for his accomplice or aider (“whosoever shall harbour him”).

It seems that Tsar Dušan and the Serbian Orthodox Church were frightened of the Bogomil's propaganda, because article 85 punishes “*Babun's words*”. Their hostility towards *Babuni* is evident from some documents using insulting expressions to describe this sect. In an old manuscript of *The Synodikon of Orthodoxy* (Συνδικόν τῆς Ὁρθοδοξίας),³⁷ belonging to the Holy Trinity monastery near Pljevlja,³⁸ dating between 1380 and 1395, there is an anathema against “evil heretics accursed *Babuni*, who falsely call themselves Christians and mock at our Orthodox faith” (зли ѡретици трыклети бабоуниѣ нарицающе се лъжикрстианѣ и роугающе се нашеи правѣи вѣриѣ). All persons who believe in “*Babun's faith*” (въ бабоуѣнскоуѣ вѣроу), all those who know that some are *Babuni* and in spite of that are harbouring and feeding them, and all those who know that some individuals are *Babuni* and do not curse them—all those categories of people were anathematized.³⁹

The Bogomil's teaching was very dangerous for the official Church. In their monarchian dualist story, Bogomils taught that God had two sons, the elder Satanail and the younger Michael. Satanail rebelled against the father and became an evil spirit. He created the lower heavens and the Earth and tried

37 *The Synodikon of Orthodoxy* is a document read on the first Sunday of Lent (a shortened form of the Anglo-Saxon word *lencten* = the spring, from *lang* = long, so-called from the lengthening of the days in the spring; Greek Μεγάλη Τεσσαρακοστή or Μεγάλη Νηστεία meaning “Great 40 Days” and “Great Fast”; Latin *Quadragesima*, “Fortieth”, the period of 40 weekdays from Ash Wednesday to Easter, observed in Christian churches by fasting and penitence to commemorate Jesus' fasting in the wilderness) in the Orthodox Churches of Greek rite. It celebrates the restoration after the iconoclast crisis in Byzantium, and a victory over the iconoclasm (from Greek εἰκονοκλάστης, literally “imagedestroyer”) from 843. On this occasion, “Many Years” (*mnogaja ljeta*) was read as the blessing for living persons and “Memory Eternal” (*večnaja pamjat*) for the dead strugglers and leaders of the Orthodox Church, while the heretics were accursed. See A. Kazhdan, “Synodikon of Orthodoxy” and P.A. Hollingsworth, A. Kazhdan, and A. Cutler, “Triumph of Orthodoxy”, in *ODB*, pp. 1994 and 2122–2123, and N.R. Sindik, “Synodik”, in *LSSV*, pp. 668–670.

38 Pljevlja (Serbian Cyrillic Пљевља) is a town and a centre of the Pljevlja Municipality located in the northern part of Montenegro. In 2011, the Municipality of Pljevlja had a population of 30,786, while the city itself had a population of about 19,489.

39 See V. Mošin, “Serbskaya redakciya sinodika v nedelju pravoslavlja. Teksti” (“Serbian Redaction of Synodikon in Orthodox Sunday. Texts”), *vv* 17 (1960), pp. 278–353.

in vain to create man, though in the end he had to appeal to God for the Spirit. After creation Adam was allowed to till the ground on condition that he sold himself and his posterity to the owner of the Earth, Satanail. In order to free Adam and his offspring, Michael was sent in the form of a man, becoming identified with Jesus Christ, and was “elected” by God after the baptism in the Jordan. When the Holy Ghost appeared in the shape of the dove, Jesus received power to break the covenant in the form of a clay tablet (χειρόγραφον) held by Satanail from Adam. He had now become the angel Michael in a human form, and as such he vanquished Satanail, and deprived him of the suffix *il* (meaning God), in which his power resided. Satanail was thus transformed into Satan. However, through Satan’s machinations the crucifixion took place, and Satan was the originator of the whole Orthodox community with its churches, vestments, ceremonies and fasts, with its monks and priests. This material world being the work of Satan, the perfect must eschew any and every excess of its pleasure, though not so far as asceticism.

The Bogomils taught that prayers were to be said in private houses, not in separate buildings such as churches. Ordination was conferred by the congregation and not by any specially appointed minister. The congregation were the “elect”, and each member could obtain the perfection of Christ and become Christ. Marriage was not a sacrament. Bogomils refused to fast on Mondays and Fridays, and they rejected monasticism. They declared Christ to be the Son of God only through grace, like other prophets, and that the bread and wine of the Eucharist were not physically transformed into flesh and blood; that the Last Judgment would be executed by God and not by Jesus; that images and the cross were idols and the veneration of saints and relics idolatry. Their disbelief in anything that is created with materialistic and governmental goals led Bogomil followers to refuse to pay taxes, to work in serfdom, or to fight in conquering wars. The enemies and contemporaries of the movement interpreted this rejection of the feudal social system as creating disorder, even as the destruction of the State and Church.

Some of those ideas could be attractive, especially for an exploited class of commoners. An Orthodox did not have to accept the complete Bogomil teaching, but rather some of its elements—so-called “*Babun’s word*”. That was the reason why the penalty was not so severe as it is in article 10: a fine of 100 perpers for a noble and 12 perpers and flogging for a commoner.

Copyists of the Code from the 16th and 17th centuries, when Bogomilism had completely disappeared in Europe, did not understand the word *Babun*, and they replaced it with other expressions. The Ravanitza transcript (between 1650 and 1687) has a title “Of an inappropriate word” (За неприкладнѣ речѣ) and the text “If someone utters to anyone an evil and dishonorable word” (Аще

кто кому речет злѣ и безчѣстнѣ рѣчь).⁴⁰ The so-called manuscript from Sofia (second half of the 17th century) has a title “Of a dishonest word” (За непоуценѣ речь), and the same text as the Ravanitza copy.⁴¹

3 Conversion to Catholicism and Catholic Propaganda

Provisions of Dušan's Law Code use the word “Christian” in the sense of a member of the Orthodox Church, while Roman Catholics were referred to as “Latins”, “Latin Heretics”, *azymistvo* (“unleavened bread”), “Half-belivers” (*poluverac*), and “Heterodox” (*inoverac*). Similar to the Code, a long list of nations written in the 13th century divided all nations into three groups: a) Orthodox, such as Greeks, Bulgarians, Serbs, Russians, Georgians, etc.; b) Heterodox, being Germans, Hungarians, Croats, Bohemians, Poles, etc.; c) Infidels, like Jews, Turks, Saracens (Arabs), etc.⁴² Roman Catholics acted in the same way. They called Greek Orthodox *schismatici* (schismatics) = guilty of schism (Greek σχίσμα, from verb σχίζω, meaning I tear, rend, split, slit, cleave)—an offence of causing the division of the Church into two parts (a split in the Christian community).⁴³ Poland and Croatia were considered *antemurale Christianitatis*, although further to the east stood Russia and Serbia.⁴⁴ Such terminology indicates a great intolerance existing between the Greek Orthodox and Roman Catholic Churches of that epoch.

However, in mediaeval Serbia there lived a great number of Roman Catholics, and their legal position was not unfavourable. Ragusan merchants and Saxon miners were both Roman Catholics, and they got numerous privileges from monarchs personally. Among the King's and Tsar's noblemen we can find Roman Catholics, such as German mercenaries in the army and court dignitaries from the maritime towns of Kotor, Budva and Bar. Roman Catholics lived in their colonies in towns, having their churches and priests,⁴⁵ and they could

40 Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. III, p. 316.

41 Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. III, p. 378.

42 Lj. Kovačević, “Nekoliko priloga za crkvenu i političku istoriju Južnih Slovena, I–V” [“Some Contributions to the Church and Political History of the South-Slavs, I–V”], *Glasnik SUD* 63 (1885), p. 8.

43 See J. Meyendorff, “Schism”, in *ODB*, pp. 1850–1851.

44 Cf. Taranovski, *Istorija*, vol. I, p. 107, note 1.

45 Marin Žaretić, Roman Catholic Archbishop of Bar (архиепископъ Маринѣ), and his family got hereditary estates from Serbian King Uroš and his son Milutin (*SSA* 6 [2007], p. 12). Tsar Dušan's chrysobull to the monastery of Saint Archangels mentions “Latin priests who are in the village of Šikla” (и попове латиньски кои соу оу Шикли), in the region

freely profess their religion. How such tolerance between two churches could be explained?

Stefan Dušan, as an Orthodox Emperor, hardly tried to stop Catholic propaganda, which was extremely strong during his reign. Pope Clement VI (1342–1352) tried in 1343 to subordinate the Holy Mountain and the whole of Serbia to his spiritual domain, and Franciscan monks (Friars Minor, *Ordo fratorum minorum*) restarted their activities in Bosnia. In such circumstances, under the influence of the Patriarch and Greek monks from the Holy Mountain, Stefan Dušan prescribed in his Law Code four articles prohibiting conversion to Catholicism and Catholic propaganda.

First, article 6, “Of the Latin heresy” (Џ ереси латин’скои), runs as follows:

And concerning the Latin heresy, any Christians who have turned to unleavened bread, let them return to Christianity. And if anyone fails to obey and does not return, let him be punished as is written in the laws of the Holy Fathers.

И за ересь латин’скоую, цю се сѡ обратили христїане въ азїмство, да се възврате ѡпетъ въ христїан’ство; ако ли се кто ѡбрѣте прѣчювъ, и не възвратив’ се въ христїан’ство, да се каже како пише оу законикѡ светѣиѣхъ ѡтѣць.⁴⁶

In the Code, two terms were used for the confession of the Catholic religion: *azymistvo* and “Latin heresy”. *Azymistvo*, i.e. the unleavened bread (Greek ἄζυμος = unleavened, from ζύμη = leaven) used by the Armenian and Latin Churches in the eucharistic sacrifice based on the tradition that such bread was used at the Last Supper, at which Jesus instituted the Eucharist (εὐχαριστία, “thanksgiving”), a principal Christian liturgical service.

Why does the Code call Catholicism the “Latin heresy”, and yet a Catholic is not a heretic? And what does the wording “let him be punished as is writtten in the laws of the Holy Fathers” mean? This type of penalty is not clear, because neither the *Nomokanon* of Saint Sabba nor the *Syntagma* of Matheas Blastares contain penal law provisions regarding conversion to Catholicism. It is possible that the State Council, which promulgated article 6, made an allusion to the law exposed in the *Syntagma* of Matheas Blastares (A-1), which deprived of full

of Gornji Polog, today in Albania (edited by Mišić and Subotin-Golubović, *Svetoarhande-lovska hrisovulja*, p. 99).

46 Burr, “The Code of Stephan Dušan”, p. 199; Novaković, *Zakonik*, p. 11; *Zakonik cara Stefana Dušana*, p. 100.

legal capacity all those who had renounced the Orthodox faith and become heretics. The law was taken from the *Procheiron* (xxxix, 34), and it repeats provisions from Emperor Justinian's law, promulgated in 531.⁴⁷ However, Justinian in the sixth century could not expect the Great Schism of 1054, and he aimed at heretics (*De Haereticis et Manichaeis et Samaritis*). But from the point of view of an Orthodox Tsar, an extensive interpretation of Justinian's law could consider Catholics as a sort of heretic, and that is the reason why the Code used the expression "Latin heresy".⁴⁸

Article 7, "Of the Latin heresy" (Ѡ ереси латин'ском) runs as follows: "And the Great Church⁴⁹ shall appoint protopops⁵⁰ in all cities and market towns to bring back Christians from the Latin heresy, who have turned to the Latin faith, to give them spiritual instructions, and that every man return to Christianity" (И да постави црьковъ велика протопопѣ, по вѣсѣхъ градовѣхъ и тръговѣхъ да вѣзвратѣ христ'яне ѡт ереси латин'скыне, кои се сѣ ѡвѣратили вѣ вѣрѣ латин'скоу; и да имъ даде заповѣдь доуховнѣ; и да се вѣсаки врати вѣ христ'ян'ство).⁵¹ Article 7 is in close connection with article 6, and it has the same title. It shows that the power of Rome in the Balkans was still redoubtable, that the Tsar should allocate the duty of reconversion to the Patriarch himself, without regard to the metropolitans and bishops.

Article 8, "Of Latin priests" (Ѡ латин'скомъ попѣ), reads: "And if a Latin priest convert a Christian to the Latin faith, let him be punished according to the laws of the Holy Fathers" (И попъ латин'скы, ако се наидѣ ѡвѣративъ христ'янина вѣ вѣрѣ латин'скоу, да се каже по законѣ светыхъ ѡтцѣ).⁵² The penalty for the priest was not explicitly given. The meaning of the wording "according to the laws of the Holy Fathers" is not clear, because such a provision does not exist either in the *Nomokanon* of Saint Sabba or the *Syntagma* of Matheas Blastares.

Article 9 is entitled "Of half-believers" (Ѡ полѣвѣр'цѣи), and runs as follows: "And if anywhere a half-believer take a Christian woman to wife, let him be baptized into Christianity: and if he will not be baptized, let his wife and children be taken from him and let a part of the house be allotted to them, but he shall be driven forth" (И ако се наидѣ полѣвѣр'ць ѡузъмъ христ'яницѣ; ако ѡзлюбѣ да

47 See above, title "Renunciation of Orthodoxy".

48 Solovjev, *Zakonik cara Stefana Dušana*, p. 175.

49 The expression "Great Church" (ἡ Μεγάλη ἐκκλησία) usually refers to the Patriarchate of Constantinople, but in the Code to the Serbian Patriarchate.

50 I.e. "chief priests". See Chapter 6, note 17.

51 Burr, "The Code of Stephan Dušan", p. 199; Novaković, *Zakonik*, p. 12; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

52 Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 13; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

се крѣсти оу христїан'ство; ако ли се не крѣсти, да моу се оузмѣ жена и дѣца и да имь даа дѣль ѿт коукиє; а ѡнѣ да се иждене).⁵³ The “half-believer” is a “Latin” (Roman Catholic), one who is not completely “Christian” (Orthodox) nor yet pagan.

The Code prohibits marriages between Catholics and Orthodox, although in Serbia before the promulgation of the Code there existed mixed marriages and consorts could retain their religion. A well-known example is Helen of Anjou (French *Hélène d'Anjou*),⁵⁴ spouse of Serbian King Stefan Uroš I (1243–1276), who was addressed in a Papal letter as *Helena regis Rassiae illustris* and *Carissime in Christo filiae Elenae ... lumini catholice fidei*.⁵⁵ It is obvious that she remained Catholic even after her marriage.⁵⁶ However, the Code mentions only a case when a Catholic takes “a Christian woman”. If he does not want “to be baptized into Christianity” (i.e. to accept the Orthodox faith), the penalty would be very rigorous (“let his wife and children be taken from him ... and he shall be driven forth”). Such a strict provision cannot be found in the sources of Byzantine canon law. But why was the opposite case—when an Orthodox man takes a Catholic woman as a wife—not regulated by the Code? First, we might suppose that a Catholic wife could easily accept the religion of her husband. According to a second hypothesis, the Code has accepted a rule that “presumptions arise from what generally happens” (*ex eo quod plerumque fit*): marriages between Catholic men, living in Ragusan and Saxon colonies, and Serbian Orthodox women were frequent, and the Tsar was afraid that Orthodox women might become Roman Catholics. It seems that marriages between Catholic women and Serbian Orthodox husbands were rare, and that is why the Code kept silent.

The purpose of article 21, entitled “Of the sale of Christians” (Ѡ проданїи христїан'скомь) is similar to those of articles 6, 7, 8 and 9. It runs as follows: “And whosoever shall sell a Christian into another and false faith, let his hands be cut off and his tongue cut out” (И кто прода христїанина оу инѣ невѣр'ноу

53 Burr, “The Code of Stephan Dušan”, p. 200; Novaković, *Zakonik*, p. 13; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

54 In the charters of Charles I and Charles II of Anjou, Helen was called *consanguinea nostra carissima*, *cognata nostra*, *affinis nostra carissima*. See F. Rački, “Rukopisi tičući se južnoslovenske povijesti u arhivih srednje i donje Italije” [“Manuscripts Regarding South-Slavs History in the Archives of Middle and South Italy”], *Rad JAZU* 18 (1872), pp. 219–225.

55 M. Purković, *Avinjonske pape i srpske zemlje* [Avignon Popes and Serbian Lands] (Belgrade 1934), p. 11.

56 On the life and personality of Queen Helen, see the recent work by M. Popović, *Srpska kraljica Jelena između Rimokatoličanstva i pravoslavlja* [Serbian Queen Helen between Roman Catholicism and Orthodoxy] (Belgrade 2010).

вѣрѣ да мой се роука исече и еззык оуреже).⁵⁷ Here, a “Christian” is an Orthodox and “another and false faith” (*ina neverna vera*) is Catholicism. It is clear that the Code punishes with a very strict penalty the sale of an Orthodox to a Catholic. However, according to the wording of article 21 it seems that the slave trade in Orthodox cities was allowed *tacito consensu* (“with tacit consent”)—done with the unexpressed but presumed consent of a principal party.⁵⁸

4 Pagan Relicts

According to a story of Constantine VII Porphyrogennetos, the conversion of the Serbs to Christianity started in the 7th century, during the reign of Emperor Herakleios (610–641), just after their arrival in the Balkans. Constantine Porphyrogennetos wrote that “the Emperor [Herakleios] brought elders from Rome and baptized them [Serbs] and taught them fairly to perform the works of piety and expounded to them the faith of the Christians” (οὗς ὁ βασιλεὺς πρεσβύτας ἀπὸ Ῥώμης ἀγαγὼν ἐβάπτισεν, καὶ διδάξας αὐτοὺς τὰ τῆς εὐσεβείας τελεῖν καλῶς, αὐτοῖς τὴν τῶν Χριστιανῶν πίστιν ἐξέθετο).⁵⁹ However, it seems that complete conversion to Christianity ended in the 9th century, during the reign of Emperor Basil I (867–886), or more precisely between 867 and 874, when the sources mention the first Serbian Prince with a Christian name—Peter (Petar, Serbian Cyrillic Петар), a son of Prince Goynik (Gojnik, Гојник).⁶⁰

57 Burr, “The Code of Stephan Dušan”, p. 202; Novaković, *Zakonik*, p. 24; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

58 Although the Roman Catholic Church was against the slave trade, it was tolerated in the Balkans because the objects of the trade were Bosnian Bogomils. Trade agents were Ragusans. Bosnian rulers tried to stop that type of commerce, but without success. In a letter addressed to the Bosnian King Stefan Ostoya (2 September 1400), the Ragusans promised to cease the slave trade and punish rigorously everyone who sold and bought human beings (И цю краљевѣство ти пише за челада и за соль да ти љзна величество ми смо послали заповѣдаи на трѣгѣ и да се личи по всемь трѣгѣ да никторѣ не смѣ кѣповати ни продавати челада иѣр нѣсмо хвѣтни да никторѣ трѣжи людѣцѣми меси. Тко гвдѣ ли се наидѣ да сѣпротѣвѣ љчини такози га кѣмо педѣпсати да нега гледѣи нитко не смѣ веки тога љчинит). However, it seems that the Ragusans were not sincere and that they proceeded with the slave trade. Edited by R. Mihaljčić, *SSA* 9 (2010), p. 161.

59 *De administrando imperio*, c. 32, 27–29, edition Moravcsik and Jenkins, pp. 154–155.

60 According to the hypothesis of Radojičić, “La date de la conversion des Serbes”, p. 253sq. Taking Christian names as the only reliable argument, J. Kovačević, *Istorija Crne Gore* [History of Montenegro] (Titograd [modern Podgorica] 1967), vol. I, p. 354, tried to prove that the Serbs converted to Christianity between 830 and 840, because in that period Constantine Porphyrogennetos mentions another Serbian Prince with a Christian name—Stephen (Stefan, Стефан), third son of Prince Mutimir. For a better understanding of the

Although Serbs lived for a long span of time as pagans we know practically nothing on their religion. The information given by Byzantine writers is generalized, and they describe Slavonic pantheism, not a particularly Serbian polytheism.⁶¹ However, in Serbian folk customs we can find up to the present day traces of pagan practices that existed side by side with Christianity. Some information, given by legal sources, is evidence that Serbian sovereigns and the Serbian Orthodox Church fought vigorously against pagan relicts. But it is impossible to say, due to the lack of relevant historical sources, whether pagans lived in Serbia as a detached category of the population, and in what numbers. It was evident that paganism was not allowed, but it is possible that in the rural regions of Serbia there lived people who retained a religion of their ancestors.

The *Nomokanon* of Saint Sabba in chapter 61⁶² mentions paganism, calling it "Hellenism" (Ἑλληνισμός, Ἑλινῆστρο),⁶³ and regarding it as one of "Four Mothers" of pre-Christian heresy, beside "Barbarism" (Βαρβαρισμός, Βαρ'βαρῆστρο),⁶⁴ "Scythism" (Σκυθισμός, Σκυϋῆστρο)⁶⁵ and "Judaism" (Ἰουδαϊσμός, Ἰουδ'βῆστρο).⁶⁶

genealogy of the first Serbian sovereigns, see G. Ostrogorski, "Porfirogenitova hronika srpskih vladara i njeni hronološki podaci" ["Porphyrogenetos' Chronicle of Serbian Rulers and its Chronological Data"], *IC* 1–2 (1948), pp. 24–29.

61 Cf. V. Čajkanović, *Mit i religija u Srba. Izabrane studije* [Myth and Religion with Serbs. Selected Studies] (Belgrade 1941, reprint 1991). According to Čajkanović, the supreme Serbian god was Dabog (*da*, imperative of the verb *dati* = to give, and the noun *bog* = god), a black and lame god, master of hell and the dead, protector of cattle but also wolves. Although Dabog was considered as the "Serbian national god", he is identical with Dabog, god of all Slavs (pp. 146–157). Dabog, Dažbog or Daibog (Дабогъ, Дажбогъ, Дабѣогъ) is one of the major gods of Slavic mythology, most likely a solar deity and possibly a cultural hero. He is one of several authentic Slavic gods mentioned by a number of medieval manuscripts, and one of the few Slavic gods for which evidence of worship can be found in all Slavic tribes.

62 Ed. Petrović, pp. 354b–356b.

63 According to Epiphanius of Salamis, Hellenism originates from Serug (Greek Σερούχ), great-grandfather of Abraham (*Genesis*, 11, 20–26). The main characteristics of Hellenism are idolatry, polytheism and fortune-telling (a fortune-teller is one who professes to tell future events in the life of another).

64 According to Epiphanius of Salamis, Barbarism belongs to the epoch from Adam to Noah, when the law was the will of every man.

65 According to Epiphanius of Salamis, Scythism refers to the time from Noah to the building of the Tower of Babel and later until Peleg and his son Reu. Peleg is mentioned in the Hebrew Bible as one of two sons of Eber, an ancestor of the Israelites, according to the "Table of Nations" in *Genesis* 10, 11. Later on, Peleg and Reu moved into Scythian territories, i.e. East Europe. The name of the heresy originates from the Scythians (Greek Σκύθοι, Σκύθης), also known as Scyth, Saka, Sakae, Iskuzai or Askuzai, a nomadic people who dominated the Pontic steppe from about the 7th century BC until the 3rd century BC.

66 According to Epiphanius of Salamis, Judaism derived from Judah, who was the fourth son

However, this fragment was taken from Epiphanius of Salamis, and on that basis we may not conclude that pagans lived in mediaeval Serbia.

The Law Code of Stefan Dušan contains only two articles which refer to some traces of pagan religion:

First we have article 20, "Of Graves" (Њ гробѣхъ): "And if any person be taken out of his grave for magic and be burnt, any village that does this shall pay a fine [so-called "vražda"]; and if any priest shall come to it, let his priesthood be taken from him" (И людіе које сѣ влѣховѣствомъ оузимаю изъ гробовѣ тере ихъ сѣжигѣ; село које тозѣи оучини да плати враждѣ; ако ли боудѣ попь на този дошьль да мѣ се оузме поповѣство).⁶⁷ The taking out of corpses from graves and burning them, the Code calls *vlhovstvo* (magic),⁶⁸ because the peasants believed that some persons were transformed in werewolves (*vukodlak*, *вукодлак*).⁶⁹ It was a superstition typical for all Balkan nations, and in Serbian it was preserved until the beginning of the 20th century.⁷⁰ As it was common that all peasants from the village attended, the Code prescribed a collective criminal liability—to pay so-called *vražda*, a fine that had to be paid for murder (500 perpers). If a parish priest was present at the event, his priesthood would be taken from him.

It is important to underline that transcripts from Bistritza, Hodoš and Hilandar have the title "On heretics who burn the bodies of the dead" (Њ еретицѣхъ кои телѣса мрѣтвыихъ жегуѣтъ),⁷¹ considering that all those superstitious people were heretics, perhaps Bogomils. The title of article 20 in the Athos transcript (in the Athos manuscript it is article 25) replaced the word "heretics" with "wizards, fortune-tellers" (Њ рѣсницѣхъ).⁷² The copyist used the Old Slavonic word *resnik*, derived from *res* = the truth⁷³ and *resan* = true, truthful.⁷⁴ As Jireček noticed, Bogomils called themselves *resnici*, i.e. "friends of the truth".⁷⁵

of Jacob and Leah, the founder of the Israelite Tribe of Judah. By extension he is indirectly eponymous of the Kingdom of Judah, the land of Judea and the word "Jew".

67 Burr, "The Code of Stephan Dušan", p. 202; Novaković, *Zakonik*, p. 23; *Zakonik cara Stefana Dušana*, vol. III, p. 104.

68 The word is obsolete. In modern Serbian the term *mađioničarstvo* (мађионичарство) is in use.

69 See Karadžić, *Srpski rječnik*, p. 79, article "Vukodlak" (der Bampyr, *vampyrus*).

70 M.D. Milićević, *Život Srba Seljaka* [Life of Serbian Peasants], *Srpski etnografski zbornik. Život i običaji narodni*, II odeljenje, I knjiga (Belgrade 1894), p. 326.

71 Novaković, *Zakonik*, pp. 23–24; *Zakonik cara Stefana Dušana*, vol. II, pp. 80, 118, 176, 240.

72 Novaković, *Zakonik*, p. 23; *Zakonik cara Stefana Dušana*, vol. I, p. 170.

73 In modern Slovenian, *res* means the truth or really, and *resen* means serious, grave, earnest, solemn.

74 See Mažuranić, *Prinosi*, p. 1244, article "Res"; Skok, *Etimologijski rječnik*, vol. III, p. 131, article "Resan".

75 Jireček, "Das Gesetzbuch Stephan Dušans", p. 211.

Toponyms which retain the names *Resnik* and *Resan* include the village *Resnik*, close to Belgrade, and the city of *Resen* (*Resan*, *Ресан*) in North Macedonia (the ancient Illyrian city of Damastion—Δαμάστιον).

Although article 20 reveals pagan relicts, the essence of the crime was profanation of graves and disrespect of dead bodies. The *Syntagma* of Math-eas Blastares, in Chapter T-10, entitled “On grave plunderers” (Περὶ τυμβωρύ-χων, *Ο γροβοριτελειχъ*), exposed very severe dispositions on persons who robbed graves. Beside two ecclesiastical rules (the 66th rule of Basil the Great and the seventh rule of Gregory of Nyssa), we find seven laws also condemning the profanation of graves:

- “Whosoever steals from graves, let him be accused for sacrilege” (Οἱ ἀπὸ τῶν τάφων ὕλας ἀφαιροῦντες ὑποκείσθωσαν τῷ τῆς ἱερουσυλίας ἐγκλήματι, *Иже отъ гробовъ вештъ отиemiaшѣ, да подлeжитъ свештенотаниѣства съгрьѣшенію*).⁷⁶
- “If anyone steals stones or columns or marble or any other thing from a grave, let him pay 20 *litres* of gold to public treasury” (Ἐάν τις ἀπὸ τάφου ἀφέληται λίθους, ἢ κίονας, ἢ μάρμαρα, ἢ ἄλλην οἴανδήποτε ὕλην, εἴκοσι λίτρας χρυσίου τῷ δημοσίῳ καταβαλλέτω, *Аште кто отъ гроба отиметь каменіе, или стлѣпове, или мраморіе, или иного кою любо вештъ, двадесете литрѣ злата въ цариноу да платитъ*).⁷⁷
- “Those who disinter and plunder dead bodies, if they do that with weapons, they shall be punished by death; if without weapons, they have to work in the mine” (Οἱ τυμβωρυχοῦντες, καὶ γυμνοῦντες τὰ τῶν τεθνεώτων σώματα, εἰ μὲν μεθ’ ὀπλων, κεφαλικῶς τιμωροῦνται· εἰ δὲ χωρὶς ὀπλων, μέχρι μετάλλου, *Иже гроби копаюштен, и обнажаюштен оумьршихъ тѣлеса, аште оубо съ ороужіемъ, главнѣ тометь се; аште ли безъ ороужіа, да же до роуды*).⁷⁸
- “To those who rob the dead in graves, let the hands be cut off” (Οἱ τοὺς νεκροὺς ἐν τοῖς τάφοις ἐκδύοντες χειροκοπεῖθωσαν, *Иже мрътвыи въ гробѣхъ съвладе-шѣ, да оусѣкноутъ се имъ роукы*).⁷⁹
- “If commoners displace holy relicts or bones, let them be punished by death; but if they are eminent persons, let them be thrown into the dungeon or sent into the mine” (Οἱ λείψανα, ἢ ὅστ’ ἀ μετακινήσαντες, εὐτελείς μὲν ὄντες, ἄκρως τιμωροῦνται· ἔντιμοι δὲ, περιορίζονται, ἢ εἰς μέταλλα πέμπονται, *Иже мошти или кости прѣдвигше, себри оубо соушѣ, краниѣ тометь се; поутенъ ныи же въ тым-ницюу вьмѣтаютъ се, или въ роуды послаають се*).⁸⁰

76 *Basilika*, LX, 23, 15. On sacrilege see Chapter x, 2, of this work, entitled “Crimes against property”.

77 *Ibid.*

78 *Basilika*, LX, 23, 3, 6.

79 *Procheiron*, XXXIX, 57.

80 *Basilika*, LX, 23, 3, 6.

- “It is not allowed to touch and seize the earthly remains of the deceased; it is allowed to move the persons who were provisionally buried into another place” (Οὐ δεῖ τὰ λείψανα τῶν τελευτώντων ψηλαφᾶσθαι ἢ σκυλεύεσθαι· τὰ δὲ προσκαίρως ἀποτεθέντα μεταφέρειν ἔξεστι, Не поѡбаиетъ мошти оумиroyш-тихъ охалявати или промѣтати; на врьме же положенъные прѣносити лѣтъ кестъ).⁸¹
- “Nobody may move a human body to another place without an Imperial order” (Μηδεὶς σῶμα ἀνθρώπινον χωρὶς κελεύσεως βασιλικῆς εἰς ἕτερον τόπον μεταφερέτω, Никтоже тѣло γλοуѣге безъ повелѣнiа царскаго въ ино мѣсто да прѣноситъ).⁸²

However, the *Syntagma* of Matheas Blastares does not contain any provision on the burning of werewolves, prescribed by article 20 of the Code. Obviously it was a typical Balkan superstition unknown in Byzantium.

Second, we have article 109, “On poisoning” (Ὁ ὀτρυνεῖς): “If a magician or poisoner be detected, let him be punished according to the Law of the Holy Fathers” (Магѣиникъ и ѡтрѡвникъ кои се наиде ѡбличено, да се каже по законѣ светѣиыхъ ѡтѣць).⁸³ According to the modern science of criminal law, poisoning belongs to crimes against the person, but mediaeval law considered it as a crime against religion, a kind of magic, i.e. an incantatory knowledge of natural forces. Under the influence of Byzantine law, the Code equalizes the magician and the poisoner, but only in the case when they were detected. The wording “if he be detected” (кои се наиде ѡбличено) means that the poisoner would be punished only if the *corpus delicti* (the body or material substance upon which a crime has been committed), i.e. poison, elixir or “magic” herbs, was found in the possession of the accused person.

Punishment “according to the Law of the Holy Fathers” refers on the ample Chapter M-1 of the *Syntagma* of Matheas Blastares, entitled “On wizards, mathematicians [those who tell somebody’s fortune out of numbers],⁸⁴ fortune-

81 *Basilika*, LX, 23, 3, 6.

82 *Basilika*, LV, 3, 14. See *Syntagma*, ed. Ralles and Potles, p. 475; ed. Novaković, p. 506.

83 Burr, “The Code of Stephan Dušan”, p. 518; Novaković, *Zakonik*, p. 84; *Zakonik cara Stefana Dušana*, vol. III, p. 128. Article 109 exists only in the Struga, Prizren and Rakovac transcripts. Cf. N. Pavković, “Narodna religija u Zakoniku i vremenu cara Dušana” [“People’s Religion in the Code and Times of Tsar Dušan”], in *Zakonik cara Stefana Dušana, zbornik radova* [Code of Tsar Stefan Dušan, Proceedings of the Conference Held on 3rd October 2000, on the Occasion of 650 Years from the Promulgation] (Belgrade 2005), pp. 37–55, especially pp. 43–44.

84 Mateas Blastares (Chapter M-1, ed. Ralles and Potles, p. 359; ed. Novaković, p. 379) quotes a law, taken from the *Basilika* (LX, 39, 23), which orders that geometry is taught in public, but mathematics is condemned in public (Ταύτη τοι καὶ ὁ νόμος φησὶν· Ἡ μὲν γεωμετρία

tellers, and on astrologers, deluders, and also on sorceries, using of poisons and amulets” (Περὶ μάγων, μαθηματικῶν, καὶ μάντεων, ἔτι δὲ καὶ ἀστρολόγων, ἐπαοιδῶν, ἀλλὰ δὴ καὶ γοητειῶν, φαρμακειῶν, καὶ περιάπτων, О вальхвахъ, оучителныхъ, баѡл’ниѡхъ, ѡшѡ же зѡѡздохлоуѡхъ, обавниѡхъ, нъ оубо и ѡроудѡхъ, отравниѡхъ и бавезателныхъ).⁸⁵ At the beginning Matheas Blastares exposes the 61st canon of the Sixth Ecumenical Council, which enumerates all types of sorceries, such as:

- *Fortune-tellers* are named as those who give themselves up to demons and are trying to predict the future, using symbols learnt from them.
- *Centurions* (Ἐκατόνταρχοι, СѢТНИЦИ)⁸⁶ are those who think more reasonably, and because of that consider that they are before others (ἐπίπροσθεν τῶν πολλῶν εἶναι, НАПРѢДЪ МНОГИХЪ БЫТИ).
- *Ursari* (Ἀρκτοσυρόμενοι, Мечковод’ци, lit. “bear leaders” or “bear handlers”) are those who walk she-bears, hang vessels on them, cut their fur, giving both to women in order to chase away malady and those who are envious and bewitching. Others are carrying snakes in their bosom (обавниѡци in Serbian translation) and with their “help” told fortunes (ἄλλοι δὲ ὄφεις περιφέρουσιν ἐγκολπίους, γοητεῖαν δι’ αὐτῶν μετιόντες, ИНЫ же змѣе обносѡтъ въ нѡдрахъ, обаванѣ тѡми прохოდѡшѡ).
- *Nephelomancy* (Νεφοδιῶται, Облакоγοици) are men who forecast the future by interpreting shapes and movements of clouds (Greek νεφέλη, Serbian oblak, облак = cloud).
- *Magicians* (Γόητες, Чародѡиѡ) are those who sing David’s Psalms and mention names of martyrs and even the name of the All-undefiled Lady, and add to all that fortune-telling with demons’ help.
- *Those who make amulets* (τὰ φυλακτήρια, Хранилишта). Others hang folded papers on children’s necks, written with fortuitous prayers and witchcrafts, and then tie them with red thread, in order to chase away any harm; they call that amulets and pendants (φυλακτήρια λέγουσι, καὶ περιάπτα, ѡже и хранилишта глаголютъ и навѡзаниѡ).⁸⁷

The next lines are dedicated to the condemnation of sorceries pronounced by Church Councils and Fathers: John Chrysostom’s *Homily 21, On the Statues*

δημοσία διδάσκεται· ἡ δὲ μαθηματικὴ κατακρίνεται ὡς ἀπηγορευμένη, Тѡмъ же и законъ рече: Землемѡриѡ оубо на родитѡ оучитѡ сѡ; оучител’ноѡ же ооуждаѡтъ сѡ ѡко отречен’но). Cf. *Codex Iustinianus* IX, 18, 2: *Artem geometriae discere atque exerceri publice interest. Ars autem mathematica damnabilis interdicta est* (a. 294).

85 Ed. Ralles and Potles, pp. 356–362; ed. Novaković, pp. 378–382.

86 I do not understand what kind of magicians could be centurions.

87 Ed. Ralles and Potles, pp. 356–357; ed. Novaković, pp. 376–377.

(εἰκοστῷ πρώτῳ λόγῳ τοῦ βιβλίου τῶν ἀνδριάντων); Canon 24 of the Synod of Ancyra⁸⁸ (314); Rule 83 of Basil the Great; Canon 36 of the Council of Laodicea⁸⁹ (363–364); Rules 7, 65 and 72 of Basil the Great; Rule 2 of Gregory of Nyssa.⁹⁰ The chapter finishes with 14 laws against sorceries and poisoners, adopted mostly from the *Basilika*:

- “Whosoever practices sorcery with sacrifice, let him be executed by sword; and whosoever encouraged him by demands and money, let him be punished by imprisonment and confiscation of property” (Ὁ διὰ θυσιῶν μαντευόμενος, ξίφει τιμωρεῖθω· ὁ δὲ τοῦτον προτρεψάμενος παρακλήσει ἢ μισθῷ, ἐξορία καὶ δημεύσει ὑποκαίσθω, Иже жрътвами влъхвоуе, мьченье да томиимъ боудеть; а иже оубѣдивши сего мольбою или мьздой, зѣтѹчению и распоу да подлѣжить).⁹¹
- “If poisoners are high dignitaries, let their property be confiscated; others to be punished by death” (Οἱ φαρμακοὶ, ἀξιωματικοὶ ὄντες, δεπορτατεύονται· οἱ δὲ λοιποὶ, εἰς κεφαλὴν τιμωροῦνται, ОБАВНИЦИ, САНОВНИЦИ СОУШТЕ, РАСПОЮЮТЬ СЕ; ПРОУИ ЖЕ ВЪ ГЛАВОУ ТОМИМИ СОУТЬ).⁹²
- “The one who organized sorcery, converting demure ideas into a lust, or the one who imagined a treacherous attack on human salvation, let him be punished by exile and confiscation of property” (Ὁ ἐπιτηδευσάμενος γοητείαν ἔλκουσαν εἰς ἔρωτα τοὺς σώφρονας λογισμοὺς, ἢ κατὰ σωτηρίας ἀνθρώπων μηχανησάμενος, δημεύσει καὶ ἐξορία τιμωρεῖται, ОУХЫТРИВШИ ЧАРОДѢСТВО, ПРИВЛАЧЕШЕЕ НА ВЪЖДЕЛѢНІЕ ЦѢЛОМОУДРѢНІЕ ПОМЫСЛИ, ИЛИ НА СПАСЕНІЕ ЧЛОВѢЧЕ КЪЗЫСТВОВАВЪ, РАСПОМЪ И ИЗГНАНІЕМЪ ДА ТОМИМЪ БОУДЕТЬ).⁹³
- “Nobody shall examine the one who has promised that he will practice sorcery, because sorcerers are punished by death” (Μηδεὶς ἐπερωτάτω τινὰ μαντικὴν ἐπαγγελλόμενον· οἱ γὰρ μάγοι κεφαλικῶς τιμωροῦνται, Никто же да въпрашаеть кого влъхвовати обещѣвающаго се, вльвы бо главноѣ томими соутъ).⁹⁴
- “Those who are calling demons and hurting people, let them be executed by sword” (Οἱ εἰς βλάβην ἀνθρώπων δαίμονας ἐπικαλούμενοι ξίφει τιμωρεῖσθωσαν, Иже на вѣѣды чловѣкомъ вѣсы призивающѣ, мьченье да томими соутъ).⁹⁵

88 Modern-day Ankara.

89 Ancient city in the province *Phrygia Pacatiana*, near the modern Turkish city of Denizle.

90 Ed. Ralles and Potles, pp. 357–361; ed. Novaković, pp. 377–381.

91 *Basilika*, LX, 39, 24.

92 *Basilika*, LX, 51, 34.

93 *Basilika*, LX, 39, 25.

94 *Basilika*, LX, 39, 26.

95 *Basilika*, LX, 39, 27.

- “To teach yourself prohibited things is the same as to teach somebody else” (“Ἦσαν ἐστὶ τὸ ἀπηγορευμένα μαθεῖν, καὶ τὸ διδάσκειν, РАВНО КЕСТЬ ИЖЕ ОУЧЕНИИ НАД НАΟΥЧИТИ СЕ И ИЖЕ ИНОГО ОУЧИТИ).⁹⁶
- “If a husband positively finds that his consort is a sorceress, marriage shall be dissolved by repudium [breaking off of the contract of a marriage];⁹⁷ the same will happened if a wife establishes that for her husband” (Εὐλόγως ὁ ἀνὴρ, εὐρίσκων τὴν αὐτοῦ γαμετὴν φαρμακόν, ῥεπουδίῳ λύει τὸν γάμον· ὡσαύτως καὶ ἡ γυνὴ τὸν ἄνδρα, Добронзвѣстнѣ мужъ оубѣтѣе свою женоу обавнищюу, распоустомъ раздрѣшаетъ бракъ, такожде и жена мужа).⁹⁸
- “The one who gave a poison instead of medicine to a slave shall be punished in the same way as the one who caused death; the same if he gave impudently and recklessly poisoned the potion” (“Ὁ φάρμακον ἀντὶ ἰατρείας δούλῳ δεδοκῶς ὑπόκειται τῇ αὐτῇ ποινῇ, ὡς αἰτίαν θανάτου παρασχών· ὡσαύτως καὶ ὁ προπετῶς διδοὺς φάρμακον, Иже отравоу въ мѣсто врачѣбы рабоу давъ, подлежить тоиже казни ꙗко виноу съмръти подавъ; такожде и же дрѣзостнѣ и несъмотрѣнѣ давъ напоеніе).⁹⁹
- “Those who cause, using a poison, that someone loses his mind are guilty according to the law regulating insult” (Οἱ παραγρονήσαι τινα φαρμάκων ποι οὖντες, ἐνέχονται τῷ, περὶ ὕβρεως νόμῳ, Иже изоумити се комоу отровою творещѣ, повинѣни соутъ иже о досадѣ законоу).¹⁰⁰
- “According to the law of murderers, guilty is the one who makes poison mortal for man, or sells it, or possesses it” (Τῷ περὶ φονέων νόμῳ ὑπόκειται ὁ διὰ τὸ φονεῦσαι ἄνθρωπον ποιῶν φάρμακον, ἢ πιπράσκων, ἢ ἔχων, Иже о оубициахъ законоу подлежить иже за иже оубити чловѣка творе отравоу, или продае, или имѣе).¹⁰¹
- “If someone without a guilty mind gives to a wife anticonception agents and using that she dies, the one who gave it shall be punished by exile” (Εἰ καὶ μὴ κακῶ τις λογισμῷ παράσχοι γυναικὶ συλληπτικόν, καὶ τελευτήσῃ ἡ λαβοῦσα, ἐξορίζεται ὁ παρασχών, Аште и не злѣ кто помысломъ подаеъ женѣ на зачетине, и оумреть приемшиа, затакаеъ се подавыи).¹⁰²
- “If someone, either free or slave, gives from any purpose a potion to a man or to a wife, either female slave or mistress, and they fall ill or die, the one who

96 *Basilika*, LX, 39, 29.

97 See Chapter 15, note 79.

98 *Codex Iustinianus* V, 17, 8, 3.

99 *Basilika*, LX, 39, 3.

100 *Basilika*, LX, 21, 14.

101 *Basilika*, LX, 39, 3.

102 *Basilika*, LX, 39, 3.

gave it shall be executed by sword" (Εἴ τις ἐλεύθερος, ἢ δοῦλος, ἐπὶ οἰαδήποτε προφάσει δοίη πόμα εἴτε ἀνδρὶ, εἴτε γυναικὶ, εἴτε δούλῃ, εἴτε δεσποίνῃ, καὶ ἐκ τούτου ἀσθενήσαντες ἀποθάνοιεν οἱ δεξάμενοι, ξίφει ὁ παρασχὼν τιμωρεῖσθω, **ΛΗΤΕ КТО СВОБОДЪ, ИЛИ РАБЪ, О КОЕМЪ ЛЮБО БИНѢ, ДАСТЪ НАПОИЕНИЕ ЛЮБО МОУЖОУ, ЛЮБО ЖЕНѢ, ЛЮБО РАБѢ, ЛЮБО ГОСПОЖИ, И ОТЬ СЕГО РАЗБОЛѢВЪ СЕ ОУМРОУТЬ ПРИЕМШЕИ, МЪЧЕМЪ ПОДАВШИИ ДА ТОМИМЪ БОУДЕТЬ**).¹⁰³

- “Those who produce so-called amulets, pretendedly to be useful for mankind, let them be exiled and their property confiscated” (Οἱ τὰ λεγόμενα ποιούντες φυλακτὰ, ἐπὶ φιλίᾳ τὸ δοκεῖν ἀνθρώπων, δημευόμενοι ἐξοριζέσθωσαν, **Иже глаголюмаа твореште хранилаа, за любовъ еже мнѣти ѹловѣрьскоу, раси-поуѣми да проганають се**).¹⁰⁴
- “Emperor’s Leo Novella LXV says: ‘whosoever was seen to practice sorcery, either under the pretext that he treats human bodies or that he repairs the damage from fruits of the earth, let him be punished as an apostate’” (Ἡ δὲ ξ’. νεαρά τοῦ βασιλέως Λέοντος, Εἴ τις, φησὶν, ὅλως τὰ τοιαῦτα φωραθεῖη μαγκανεύμενος, εἴτε προφάσει σωμάτων θεραπείας, εἴτε ἀποτροπῆς τῆς τῶν καρπίμων βλάβης, τὴν ἐσχάτην εἰσπρατέσθω ποινὴν, τὴν τῶν ἀποστατῶν κόλασιν ὑφιστάμενος, **Шестъдесета же и петъа новаа цара льва: Аще кто, рече. отпоудъ тако-ваа видѣнь боудеть къзынѣтвоеу, любо извѣтомъ тѣлесъ цѣлѣбы, любо въ отраженіе плодовиныхъ врѣда, послѣднею да истезанъ боудеть казнию, еже отсѣюпникъ мочѣние подіемае**).¹⁰⁵

It is evident that the Greek Orthodox Church was strongly critical of sorcerers, but this world did not generally see accusations and trials against witches. It is perhaps significant that the persecution of witches began in the West after the Great Schism of 1054. In parts of the Orthodox East, including Serbia, “witch hunts” or “witch purges”, such as those experienced in other parts of Europe, were unknown. In some European countries, such as Germany, Austria and Croatia,¹⁰⁶ witch trials were present even during the 17th and 18th centuries.

103 *Procheiron*, xxxix, 77.

104 *Procheiron*, xxxix, 78.

105 Ed. Ralles and Potles, pp. 361–362; ed. Novaković, pp. 381–382.

106 On trials against sorcerers in Europe and especially in Croatia, see V. Bayer, *Ugovor s đavlom* [Treaty with the Devil] (Zagreb 1982).

Crimes against the Person

1 Homicide (φόνος, оубѣиство)

Homicide is the killing of one human being by another. The term comes from the Latin *homo* (man) and *cidere* (to kill). In modern Serbian, the word for homicide is *ubistvo* (убиство), while the verb to kill is *ubiti* (убити). These expressions were already present in articles 86, 87, 94, 95 and 96 of Dušan's Law Code (оубѣиство and оубити). However, in our oldest Serbian legal sources, promulgated before the Law Code of Stefan Dušan, the expressions to designate homicide were *krv* and *vražda*.

Krv (крвь, lit. blood) was mentioned in treaties with Dubrovnik.¹ As we have already noted, *vražda* (вѣжда) had several different meanings. In treaties with Dubrovnik it always meant a fine that had to be paid for murder (Ако ли крвь љини ... да плати ... вѣжда).² In monastery charters, *vražda* sometimes means a crime of homicide, and sometimes a fine that had to be paid for murder. For example, in Saint George's charter we read: "from *vražda* [i.e. homicide] the fine belongs to the Church" (ѿ вѣжде ... глоба вса црьковна).³ The Dečani chrysobull says: "And for *vražda* [murder] ... half [of the fine] to the Church, and half to the denouncer" (а за вѣждоу ... црькви половина а наводьчии половина).⁴ The Gračanitza chrysobull has the wording: "And a man ... who commits *vražda* [murder]" (А ѡловѣкъ кони ... вѣждоу оуѣини).⁵ King Stefan Dušan's chrysobull for Htetovo monastery says: "And when *vražda* [homicide] was committed among the Church's villagers the Church shall take [a fine]" (И цю се оуѣини вѣжда мегоу црьковными людьми да оузима црьковь).⁶ The perpetrator of *vražda* was called *ѡбница* (*ubica* = murderer, killer).⁷ Exceptionally, in the charter of Despot John Oliver, giving privileges to the monastery of Saint

1 See Chapter 16, note 18.

2 For example King Milutin's treaty with Dubrovnik from 14 September 1302. Edited by Mošin, Ćirković, and Sindik, *Zbornik*, p. 345.

3 Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

4 Ed. Ivić and Grković, p. 63.

5 Mošin, Ćirković, and Sindik, *Zbornik*, p. 503.

6 Ed. by M. Koprivica, *SSA* 13 (2014), p. 150.

7 Saint George's charter. Mošin, Ćirković, and Sindik, *Zbornik*, p. 326. The same word is in use in modern Serbian as well.

Demetrios in Kočani⁸ (1337), homicide was called *dušegubina* (ΔΟΥΣΗΓΟΥΒΙΝΑ), and in King Stefan Dušan's charter to the monastery of Treskavac (after 1337), *dušebistvo* (ΔΥΣΗΘΥΒΙΣΤΒΟ, from *duša* = soul, and *ubistvo* = murder).⁹

However, the abovementioned legal sources speak generally on homicide, without designating the essence of the crime: was it intentional or unintentional killing of another? Felonious homicide or self-defence (an excuse for the use of force in resisting attack, especially for killing an assailant)? First- or second-degree murder or manslaughter (voluntary or involuntary)? We do not know. It seems that Serbian legal documents treat homicide as a crime that was regulated by customary law and very well known to everyone. Regrettably, we do not dispose of judgments of the court, and it remains unknown whether the old Serbian customary law made a difference between two essential types of *mens rea* (a guilty mind)—intention and recklessness—in the case of homicide.

The legislation of Stefan Dušan radically changed the old ideas on homicide and made them much closer to Byzantine law. Matheas Blastares in his *SynAGMA* disputes a homicide in three titles of Chapter Φ (F): Φ-5, "On intentional and reckless homicides" (Περὶ φόνων ἐκουσίων καὶ ἀκουσίων, Ο οὐβίσιτβѣхъ волныхъ и неволныхъ); Φ-7, "On homicides in battles and on those who are killing robbers" (Περὶ τῶν φόνων τῶν ἐν πολέμοις, καὶ τῶν φονευόντων ληστές, Ο иже въ бранехъ оубіиствѣоуъ и иже разбойники оубиваюштихъ); Φ-8, "On women who are killing children [embryo, foetus], using potions" (Περὶ τῶν φονευουσῶν γυναικῶν διὰ φαρμάκων τὰ ἐμβρυα, Ο οубиваюштихъ женахъ напоиен'ми млада'бнци).¹⁰

The First title speaks about intentional and reckless homicides, and it exposes only ecclesiastical rules.¹¹ Title Φ-7 contains ecclesiastical rules as well, which explain that killing in war is not a crime. For example, "Athanasius the Great in his Epistle to Ammon says that killing is not allowed, but to kill enemies in battle is worthy of legal encomium" (Ὁ μὲν μέγας Ἀθανάσιος ἐν τῇ πρὸς Ἀμμοῦν ἐπιστολῇ, Φονεύειν οὐκ ἔξεστι, φησὶν, ἀλλ' ἐν πολέμῳ ἀναιρεῖν τοὺς ἀντιπάλους, καὶ ἔννομον καὶ ἐπαίνου ἄξιον, Велики же Аѳанасіе въ иже къ Амону посланіи оубивати не лѣтъ есть, рече, нь въ рати оубивати съпротивобор'ныи и закон'нои похвали достоинно).¹² In title Φ-8, Matheas Blastares causes confusion through the arrangement of materials: after a title "On women who are

8 Kočani is a town in the eastern part of North Macedonia, 120 km from Skoplje. It has a population of 28,330, and it is the seat of the Kočani Municipality.

9 Novaković, *Zakonski spomenici*, pp. 662 and 671.

10 Ed. Ralles and Potles, pp. 485, 488 and 493; ed. Novaković, pp. 513, 517 and 522.

11 See Chapter 18, section 6.

12 Ed. Ralles and Potles, p. 488; ed. Novaković, p. 517.

killing children, using potions”, our author simply says “Search Chapter Γ (G) - 28 and Title 9 of the same Chapter (Canon 25 of the Synod of Ancyra)”. After that, he does not speak on the killing of an embryo, but “On unintentional homicides considering suffocated children who are lying close to their parents” (“Ἐτι περὶ φόνων ἀκουσίων, καὶ περὶ τῶν ἀποπνιγέντων νηπίων παραχειμένων τοῖς γονεῦσιν αὐτῶν; Иже о оубѣиствѣхъ неволныхъ о оудавлєннихъ младенцехъ лежештихъ близъ родителей своихъ): “It is considered that unintentional homicide exists when any child during the night lies between its parents, and they, either from negligence, or from drunkenness, or from overeating, lean heavily against a child and suffocate it” (“Ἐν τοῖς ἀκουσίοις δὲ φόνοις ἐκεῖνο κρίνεται, ἥνικα τῶν βρεφῶν ἔνια, μέσον κείμενα νυκτὸς τῶν γονέων, ἐκ ῥαθυμίας αὐτῶν, ἢ μέθῃ, ἢ γαστροὺς κόρῳ βαρυνομένων, καὶ ἐμπεσόντων αὐτοῖς, ἀποπνιγῇ, Къ невол’ныхъ же оубѣиствѣхъ оно соудити се вьнегда отъ младенць нѣции по срѣде лежеште вь пошти своихъ родители, отъ небрѣженїа ихъ или пїан’ства или ѳрѣва прѣшиштенїемъ отегчаємомъ, налегшиимъ имъ оудавити се).¹³ Those parents have to propitiate God by eating meager food (ξηροφαγία, соухοιдадениємъ) for seven years, by praying on their knees (γονάτων κλίσει, κολѣноκλаниїемъ), crying and giving charity, according to their capacity. The duration of the penalty could be shortened if they met with terrible misfortune.¹⁴ After that, in the same chapter with a misleading or incorrect title, Matheas Blastares quotes the most important Byzantine secular laws referring to a homicide, which should have been placed in Chapter Φ-5.¹⁵

The terminology of Dušan’s Law Code kept the old terms *krv* and *vražda* designating homicide in articles 103, 183 and 192, treating the matter of trial procedure.¹⁶ However, articles 86, 87, 94, 95 and 96, speaking on homicide as a crime against the person, use the noun *ubistvo* (оубѣиство) and verb *ubiti* (оубити).

Article 86, “Of homicide” (О оубѣиствѣ), reads: “When there is a homicide, he is held guilty who provoked it, even if he be killed himself” (Гдѣ се вьбрѣте оубѣиство, он’зїи коино боудѣ зарѣвалъ, да несть кривъ ако се и оубїе).¹⁷ “As killing involved a wergild,¹⁸ perhaps this clause implies that the kindred of the guilty

13 Ed. Ralles and Potles, p. 493; ed. Novakovič, p. 522.

14 Ed. Ralles and Potles, p. 493; ed. Novaković, p. 522.

15 Ed. Ralles and Potles, pp. 493–494; ed. Novaković, pp. 522–524. Those laws have already been mentioned in previous chapters.

16 On those articles we shall speak in Part 6.

17 Burr, “The Code of Stephan Dušan”, p. 215; Novaković, *Zakonik*, p. 67; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

18 Wergild or wergild was the price of homicide, or other atrocious personal offence, paid partly to the King for the loss of the subject, partly to the lord for the loss of a vassal, and partly to the next of kin of the injured person. In Anglo-Saxon laws, the amount of com-

party should pay the fine, while the family of the man provoked should be free of liability.”¹⁹ According to Teodor Taranovski, nonpunishment for homicide of the person who provoked (КОИНО БОУДѢ ЗАР’ВАЛЪ) and nonpunishment of homicide committed in self defence are not the same thing, although these two legal institutes are very similar, and sometimes it is very difficult to differentiate between them. To engage in dispute (Czech *počátek*, Polish *paczątek*, Russian *ли буде сам почаль*, German *Anfang*) or, to be more precise, the inpunishable scuffling between a man who provoked a crime and a person who was provoked is related to blood feud, which preceded the public penalty in primitive society.²⁰

The *Syntagma* of Matheas Blastares contains a provision on homicide committed in self defence (Chapter Ф-8): “The one who killed an assailant, i.e. a person who lunged at him and endangered his life, is not guilty” (ИЖЕ НАШЪДШАГО, РЕКШЕ НАИХАВШАГО ОУБИВЪ, ИМЪЖЕ О ЖИВОТЕ БѢД’СТВОВАНШЕ, НЕПОВИН’НЪ ІЕСТЪ).²¹ The Greek text, taken from the *Procheiron* (xxxix, 39), is different from the insert that is in the Slavonic text (ИЖЕ НАШЪДШАГО, РЕКШЕ НАИХАВШАГО ОУБИВЪ), and it runs as follows: Ὁ τὸν ἐπελθόντα φονεύσας, ἐν ᾧ περὶ τὴν ζωὴν ἐκινδύνευεν, ἀνεύθυνός ἐστιν.²²

Article 87, “Of deliberate murder” (Ї ОУБИСТВѢ НАХВАЛИЦОМЪ), reads: “Where there occurs homicide without intention and violence, the fine shall be 300 perpers. But if a man kill intentionally, both his hands shall be cut off” (КТО НѢСТЬ ДОШЬЛЪ НАХВАЛИЦОМЪ ПО СИЛѢ ТЕРѢ ІЕ ОУЧИНИЛЪ ОУБИСТВО, ДА ПЛАТИ, ТѢ, ПЕРЬПЕРЬ; АКО ЛИ БОУДѢ ПРИШЬЛЪ НАХВАЛИЦОМЪ, ДА МОУ СЕ УБѢ РОУЦѢ УТѢКЪ).²³ It is obvious that Dušan’s Law Code marks a difference between intentional and unintentional homicide, and it seems that it was a novelty introduced under the influence of Byzantine law.²⁴ As we have already noted, the *Syntagma* of Matheas Blastares contains a title “On intentional and reckless homicides” (Ф-5). In Chapter Ф-8 we read that in the event of a death as

pensation varied with the degree or rank of the party slain. *Angild* was the single value of a man or other thing (a single wergild). *Angylde* was the rate fixed by law at which certain injuries to person or property were to be paid for; in injuries to the person, it seems to be equivalent to the “were”, i.e., the price at which every man was valued.

19 Burr, “The Code of Stephan Dušan”, p. 215, comment on article 86. The English translator accepted Novaković’s interpretation of article 86 (*Zakonik*, p. 198).

20 Taranovski, *Istorija*, vol. II, p. 76.

21 Ed. Novaković, p. 523.

22 Ed. Ralles and Potles, p. 494.

23 Burr, “The Code of Stephan Dušan”, p. 215; Novaković, *Zakonik*, p. 68; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

24 See Chapter 17, section 3.

a result of an armed attack, if the guilty party were a noble, his estate was forfeited, and if commoner, he was beheaded and his body thrown to wild beasts (Καὶ ἔστι τοῦ μὲν ἐκουσίου φόνου τιμωρία, ἐπὶ μὲν ἐντίμου φονεύσαντος, δεπορτατίων, ἥτοι τελεία δήμευσις· ἐπὶ δὲ τῶν εὐτελῶν, τὸ ξίφει καὶ θηρίοις ὑποβληθῆναι, И кѣсть вол'ногоу оубѣиствоу томяниѣ, аште оубо кѣсть поутень оубивѣи, расипоучетъ се, сирѣчь съврѣшенное подѣмлетъ раз'гравленіи имѣніа; аште ли же себръ, мьрю и зѣврьемь прѣдаетъ се).²⁵

Article 94, "Of lords and commoners" (Ω властѣлехъ и ѿ себрѣ), reads: "If a lord kill a commoner, whether in a city or in a mountain district, he shall pay 1000 perpers. But if a commoner kill a baron, he shall pay 300 perpers and both his hands shall be cut off" (Ако оубѣ властѣлинь себра оу гравдѣ или оу жоупѣ, или оу катогнѣ, да плати тысѣциѣ перьперь; ако ли себръ властѣлина оубѣ, да моу се вѣбѣ роуцѣ ѿтѣкъѣ, и да плати, ѿ, перьперь).²⁶ This clause is typical of the feudal system that dominated the major European nations between the 9th and 15th centuries and which was based upon inequality of social classes. Homicide between members of the higher and lower estates was exempt from the general rule on murder, prescribed by article 87. As we have already seen, according to article 87, both hands shall be cut off only in the case of intentional homicide. But, article 94 punishes a commoner who has killed a nobleman by the cutting off of both hands (and a fine of 300 perpers) regardless of whether the homicide was intentional or unintentional. In the same way, the Code makes no difference between types of *mens rea* in the case of a baron: a nobleman who committed a crime of homicide (intentionally or unintentionally) shall pay 1000 perpers.

The motives of Dušan's legislation were clear: brutal punishment for the killing of a lord had the goal of preventing commoners' revolts against the privileged class. From the other side, the Tsar's desire was to limit the violation of immunity rights done by noblemen in times of labour shortages that existed in mediaeval Serbia.

Article 95b,²⁷ "On homicide" (Ω оубиствѣ), reads: "Whosoever be found to have killed a bishop, or a monk, or priest, let him be killed and hanged" (Кѣмъ се

25 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523.

26 Burr, "The Code of Stephan Dušan", p. 216; Novaković, *Zakonik*, p. 73; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

27 Article 95 consists in fact of two articles, but the copyist of the Prizren text integrated them into one, under the title "Of insulting" (Ω п'ощти). The first sentence speaks of insulting and the second of killing clerics. In other old transcripts that are two different articles: Struga manuscript, articles 52 and 53; Athos manuscript, articles 51 and 89; Hilandar manuscript, articles 83 and 84; Hodoš manuscript, articles 83 and 84; and Bistritza

ВЕРЪТЕ ОУБИВЪ СВЕТИТЕЛЯ, ИЛИ КАЛОУГІЕРА ИЛИ ПОПА, ДА СЕ ТЪЗИ ОУБИЕ И ВЕЪСИ).²⁸ The text has the expression “be killed and hanged” (ДА СЕ ТЪЗИ ОУБИЕ И ВЕЪСИ), which does not specify the method of killing. The hanging probably means that the body was gibbeted after death.²⁹

It is important to underline that bishops, monks and priests, as the three essential categories of clerics, enjoyed the same protection by law, although among their degree of ranks there existed great social and economic differences. This is also the first reference in the Code to punishment by death, probably introduced at the request of the ecclesiastical authorities, because the *Syntagma* of Matheas Blastares does not contain any rule concerning the killing of clerics. By article 95b, Dušan's Law Code completed this strange lacuna.

Article 96, “Of parricide” (Џ ОУБИСТВОУ), runs: “Whosoever kills his father, mother, brother or own child, let that murderer be burnt in the fire” (КТО СЕ ВЕРЪТЕ ОУБИВЪ ОТЬЦА, ИЛИ МАТЕРЬ, ИЛИ БРАТА ИЛИ ЧЕДО СВОЕ, ДА СЕ ТЪЗИ ОУБИИЦА ИЖДЕЖЕ НА ОГНЫ).³⁰ This regulates *parricidium*, the murder of a parent, mentioning fathers, mothers, brothers and a child. Brothers were mentioned due to the patriarchal way of life in extended families (so-called *zadrugas*) that dominated in 14th-century Serbia. Sisters left the *zadruga* by marriage, and it was perhaps for this reason that they were not mentioned.

The punishment for *parricidium* was very cruel—“to be burnt in the fire”—and this is the only reference in the Code to the penalty of burning to death, which penetrated from Byzantine law. The *Syntagma* of Matheas Blastares in Chapter Ф-8 contains a similar provision: “The one who killed a kinsman, either ascendant or descendant, shall be burnt in the fire” (‘Ο ἀνελὼν ἀνιόντα ἢ κατιόντα συγγενῇ, πυρὶ παραδίδοται, Οὐβιεῖν вѣсходѣцаго или нисходѣцаго сѣродника, огню прѣдаѣтъ се).³¹

manuscript, articles 92 and 93. As Stojan Novaković took the Prizren copy as a model for his edition of the Code, Burr translated article 95 as one, under the title “Of insulting and killing clerics” (p. 216). To avoid any confusion I accepted the numeration proposed by Đorđe Bubalo (*Dušanov zakonik*, pp. 93–94), who denoted this article as 95a and 95b.

28 *Zakonik cara Stefana Dušana*, vol. I, pp. 108, 176, 184; vol. II, pp. 96, 134, 194, 249; vol. III, p. 124.

29 Burr, “The Code of Stephan Dušan”, p. 216.

30 Burr, “The Code of Stephan Dušan”, p. 216; Novaković, *Zakonik*, p. 75; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

31 Ed. Ralles and Potles, p. 494; ed. Novaković, p. 523.

2 Mayhem

In common law, mayhem was violently depriving others of the use of such members as may render them less able in fighting, either to defend themselves or to annoy their adversary. Examples of mayhem were cutting off a person's hand, foot, or finger or putting out an eye. It was not mayhem to cut off another's nose or ear or to disfigure a person in a way that did not interfere with their ability to fight. Interestingly, it was mayhem to knock out a person's front tooth, but it was not mayhem to knock out a back tooth, because such a tooth was not needed to bite someone while fighting.³²

Contrary to Byzantine legislation, the law codes of West European mediaeval States treat mayhem with precision. For example, the Germanic law system, especially the so-called *Leges Barbarorum* ("Laws of the Barbarians"),³³ is in principle based on compensation rather than revenge. Any injury must be compensated according to the damage done regardless of motive or intent. Even for capital crimes, like murder and mayhem, the compensation is a wergild, a fixed amount depending on the sex and social status of the victim. The *Leges Barbarorum* contains a long list of fines (*compositio*) for various offences and crimes, including mayhem.

Byzantine legal miscellanies do not pay much attention to mayhem. Only one article of the *Procheiron*, speaking on homicide, says: "If someone strikes anyone with a sword, and the struck person dies, the perpetrator shall be sentenced to death by sword; if a struck person does not die, one of the the perpetrator's hands shall be cut off" (Ὁ μετὰ ξίφους πλήττων τινά, ἐὰν φονεύσῃ, ξίφει τιμωρεῖσθω· εἰ δὲ ὁ πληγείς οὐ τελευτήσῃ, ὁ τὴν πληγὴν δεδωκώς χειροκοπεῖσθω, Иже мьѣмь оударитъ нѣкого; аще оумрѣтъ оударѣнїи, мьѣмь прїиметь мѡукѣ. аще же оуязѣвѣни не оумрѣтъ, даѣвшемѣ язѣвѣ да оусѣѣтъ се роука).³⁴

The Serbian legal sources mention mayhem only in two cases, using the term "make someone bleed" (ѡкрѣѡѡи). Saint Stephen's charter says that if someone makes somebody bleed, he has to give three linen cloths to the Church, and three to the denouncer (а ѡкрѣѡѡивѣше црѣкви .Г. плат'на а наѡдѡѡни .Г. плат'на).³⁵ Article 166 of Dušan's Law Code, speaking of drunkards (ѡ пиа–ници), in the first sentence orders: "If a drunken man come from anywhere and strike anyone or cut him or make him bleed [wound him], yet not to death,

32 Brown, *Legal Terminology*, p. 108.

33 A class name for several Latin law codes of the Germanic peoples, dating to the 5th and 9th centuries, influenced by Roman law, canon law and earlier tribal customs.

34 *Procheiron* XXXIX, 82, ed. Zepos, vol. II, p. 226; ed. Dučić, p. 413; ed. Petrović, p. 327a.

35 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

then shall one eye be removed and one hand cut off” (Пияница вѣкъѣда гредѣ и зарѣве кога, или посѣче, или вкрѣвави, а не до сѣмръти, таковоу пияници да мѡу се око измѣ, и роука вѣсѣче).³⁶ However, Serbian legal sources mention only cases of bloodshed—a serious wounding—but what type of mayhem that would that be remains unclear. Anyway, bloodshed was a type of mayhem, and it must be distinguished from homicide. We can see this in a passage from a peace treaty concluded by Bosnian Duke Radoslav Pavlović and the Republic of Dubrovnik (25 October 1432): the difference between homicide and bloodshed is clearly marked (да всакоо оубинство чловѣчнѣ или крѣви пролитыа).³⁷

3 Battery

Battery is unpermitted physical contact with another person in an angry, revengeful, rude, insolent, or reckless manner. It may also be defined as the unlawful application of force on another person.³⁸

The Serbian legal sources mention only one case of battery. According to Saint Stephen’s charter a thug (вонца) who has beaten up a monastery steward (владѣла’ца бив’ше) has to give a compensation of six sheep and will stay in the dungeon for three months.³⁹

4 Rape (βιασμός, *raptus*, иѣжда)

In common law, rape was defined as the unlawful, forcible carnal knowledge by a man of a woman, against her will, or without her consent. The essential elements of the crime are the following: 1) carnal knowledge; 2) force by the man; 3) nonconsent by the woman. It was impossible, under common law, for a woman to commit the crime of rape, because the definition required carnal knowledge “by a man of a woman”.⁴⁰

Byzantine law does not pay much attention to rape and does not make a great difference between unlawful, forcible carnal knowledge by a man of a woman and the act of sexual intercourse committed by a man with a woman

36 Burr, “The Code of Stephan Dušan”, p. 532; Novaković, *Zakonik*, p. 131; *Zakonik cara Stefana Dušana*, vol. II, pp. 212, 259; vol. III, p. 148.

37 Novaković, *Zakonski spomenici*, p. 237.

38 Brown, *Legal Terminology*, p. 109.

39 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465. See Chapter 18, section 5.

40 Brown, *Legal Terminology*, p. 109.

who is not his wife, even with her consent. However, the *Ecloga* contains two articles concerning a rape: xvii, 30, “Whosoever rapes and deflowers a maiden, let his nose be cut off” (Ὁ βιαζόμενος κόρην καὶ φθείρων αὐτὴν ῥινοκοπέισθω); xvii, 31, “Whosoever deflowers a maiden under the age of consent, i.e. before the age of 13, let his nose be cut off and let half of his property be given to the one who was deprived of virginity” (Ὁ φθείρων κόρην πρὸ τῆς ἡβῆς ἡγουν πρὸ τοῦ τρισκαίδεκαετοῦς χρόνου ῥινοκοπέισθω καὶ τὸ ἥμισυ τῆς ὑποστάσεως αὐτοῦ παρεχέτω τῇ φθαρείῃ).⁴¹ The *Procheiron* took these two provisions from the *Ecloga* and in article xvii, 30 it added “and he has to give her [violated girl] a third of his property” (διδούς αὐτῇ καὶ τὸ τρίτον τῆς αὐτοῦ ὑποστάσεως).⁴² In the Serbian translation of the *Procheiron* (*Zakon gradski*) these two articles runs as follows: xxxix, 66: Ноужданъ сътвориши отроковици и растливи ю носа оурубзаніе подыметь. давь ю и третію чєсть имѣніа своего; xxxix, 67: Растливыи дѣвицѣ прѣжде възраста сирєчѣ прѣжде .г. лѣтъ врѣмень, носа оурубзаніе подыметь, и половиноѣ имѣніа своего да вѣдасть растлѣвшии отроковици.⁴³ There is a similar provision in the first part of article 138 of Dušan’s Law Code, but only in the late Ravanitza transcript (1650–1687): “The law orders: whosoever forces and deflowers a maiden, using coercion or deception, let his nose be cut off and he has to give to the maiden a third of his property” (Повелеваетъ законъ, аще кто понѣдитъ дєвѣцѣ растлити є, аще то сътворитъ съ нею по силе, илї коимъ уеблацєніємъ, да ѡрежѣтъ ємѣ носъ, и да дасть дєвѣци третію чєстъ именина своего).⁴⁴

The short Chapter Γ-30 of the *Syntagma* of Matheas Blastares is entitled “On those who rape virgins” (Περὶ τῶν γυναῖκας παρθένους βιαζομένων, Ὁ ἡγενη δέβνιце ноудєштихъ).⁴⁵ However, among the five laws quoted by Math-eas Blastares, only one concerns rape: the provision of the *Procheiron* xxxix, 66, already mentioned. Other laws in this chapter speak on seduction of a virgin and fornication (voluntary sexual intercourse between persons not married to one another).

Charters promulgated before Dušan’s Law Code mention rape using the expression *devički razboj* (разбои дѣвичѣ),⁴⁶ literally “rape of a virgin”. Saint George’s charter says that the Church shall take a fine from the perpetrator of rape (От дѣвичєга разбога ... глоба вса црьковна).⁴⁷ The same provision

41 Ed. Burgman, p. 236.

42 *Procheiron* xxxix, 66, and 67, ed. Zepos, vol. II, p. 224.

43 Ed. Dučić, p. 409; ed. Petrović, p. 326a.

44 *Zakonik cara Stefana Dušana*, vol. III, p. 332.

45 Ed. Ralles and Potles, pp. 101–102; ed. Novaković, pp. 210–211.

46 *Devica* (девица) = virgin. *Razboj* (разбој) = rape. The word *razboj* is obsolete. In modern Serbian the word *silovanje* (силовање) is in use.

47 Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

is repeated in King Dušan's chrysobulls for the monasteries of Htetovo and Treskavac.⁴⁸ In the Greek charters of Serbian monarchs *devički razboj* was called παρθενοφορία, mentioned in the following documents: King Dušan's chrysobull in favour of Saint John the Baptist monastery on the mountain Menoikeion (October 1345); Tsar Dušan's second chrysobull presented to the monastery of Ivron (April 1346); Tsar Dušan's chrysobull issued to the monastery of Zograf (Ιερά Μονή Ζωγράφου, April 1346); and Tsar Dušan's chrysobull presented to the Esphigmenou monastery (April or May 1346).⁴⁹ However, the amount of the fine was not fixed.

Dušan's Law Code also speaks of rape in article 53, entitled "Of forcing a noblewoman" (Џ ОСИЛЮ ВЛАДЫКЕ, Џ НАСИЛОВАНИИ in Athos and Bistritza texts):⁵⁰ "And if any lord take a noblewoman by force, let both his hands be cut off and his nose be slit. But if a commoner take a noblewoman by force, let him be hanged. And if he take his own equal by force, let both his hands be cut off and his nose slit" (И кои властѣлинь оузме владыкѣ по силѣ, да мѣ се љѣтъ роуке вѣтъкѣ, и носъ оуреже; ако ли себѣрь оузме по силѣ владыкѣ да се вѣтъси; ако ли свою друугѣ оузме по силѣ, да мѣ се вѣтъ роуке вѣтъкѣ, и носъ оуреже).⁵¹ As in article 94, the Code punishes rape according to the social status of the perpetrator and provides a more brutal penalty than Byzantine law. It is remarkable also that the Code does not prescribe a penalty in a case when a lord take by force a commoner woman. Some historians, especially Marxists, have thought that noblemen remained unpunished for such misdeeds.⁵² It is impossible to give a definitive answer on this question because we do not dispose with adequate historical sources. However, it is hard to believe that in any society rape was an unpunished crime. Trying to resolve this problem Teodor Taranovski found analogy in the legislation of Polish King Casimir III the Great (Kazimierz III Wielki, 1333–1370), Dušan's contemporary. According to Casimir's *Statutes* if a member of the *szlachta* (Polish nobility) raped a peasant woman from the village belonging to him, all the villagers from his manor could leave the landlord's estate.⁵³ The clause does not originate from customary law, but was rather the

48 Ed. M. Koprivica, *SSA 13* (2014), p. 150, and Novaković, *Zakonski spomenici*, p. 671, para. x.

49 Solovjev and Mošin, *Diplomata graeca*, pp. 10, 48, 50, 68, 100. Cf. pp. 477–479.

50 *Zakonik cara Stefana Dušana*, vol. I, p. 176, vol. II, p. 184.

51 Burr, "The Code of Stephan Dušan", p. 208; Novaković, *Zakonik*, p. 46; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

52 See Janković, *Istorija države i prava feudalne Srbije*, p. 93.

53 Taranovski, *Istorija*, vol. II, p. 87. Cf. M. Handelsman, *Historja polskiego prawa karnego, tom II: Prawo karne w Statutach Kazimierza Wielkiego* [History of Polish Penal Law, vol. II: Penalty Law in the Statutes of Casimir the Great] (Warsaw 1909), pp. 170–171.

King's wish to limit noblemen's despotism and protect peasants from their evil doing. Maybe villagers in mediaeval Serbia had the same right.

Article 192, entitled "Of the Court of Justice" (О соудѣ правомѣ), preserved only in the late Rakovac text, mentions "rape of a noblewoman" (разѡи владичѣскыи) as evidently part of series of enactments alongside articles 103 and 183 dealing with the sphere of the Imperial Court of Justice, Dušan's King's Bench.⁵⁴ We shall say more on that article in Part 6.

Among the maritime towns which recognized the supreme power of the Serbian monarchs, two of them in their Statutes contain provisions considering rape: Chapter C of the Statute of Kotor⁵⁵ and Chapters CCI and CCII of the Statute of Skadar.⁵⁶ However, those rules were much more similar to the statutes of

54 Burr, "The Code of Stephan Dušan", p. 537; Novaković, *Zakonik*, p. 144; *Zakonik cara Stefana Dušana*, vol. III, p. 276. See B. Marković, "Razboj vladičeski", in *LSSV*, p. 611.

55 Rape was regulated in Chapter C, entitled "Of violence against women" (*De violentiis mulierum*). It contains different penalties depending on the victim's social status. The rapist could avoid punishment by marrying the victim, if both were unmarried and if she and her family, or in the case of *ancilla*, she and her master, gave consent. If they do not enter into a marriage, the perpetrator had to pay a fine of 50 perpers for the rape of an *ancilla* (100 if she was unemployed), 500 for a woman of middle-class, i.e. from good commoners (*si fuerit de mediocri manu, et bono populo*), and 1000 for a noblewoman. If the perpetrator could not or would not pay the fine, he had to be imprisoned for three months. If he still did not pay, he would face a maiming punishment: the loss of his little finger if the victim was a serving girl, his thumb and little finger if she was a middle-class citizen, and his whole hand if she was a noblewoman. In the case of attempted rape, according to an addition from the year 1409, the sum was reduced to a quarter, and there was no corporeal punishment. The rape of a married woman and other similar cases were to be subjected to "similar penalties" (*similibus penis*). It is worth noting that the same clause implies that only "honest women" (*mulieres honestas*) could be the victims of rape: "and to similar penalties shall be subjected those who rape or violate married girls, or other honest women" (*et similibus penis subiaceant qui sforzauerint, aut violauerint maritatis puellas, aut alias mulieres honestas*). That would exclude prostitutes and women who led a promiscuous life. *Statuta Civitatis Cathari*, vol. I, pp. 60–62.

56 Chapter CCI, "On the rape of a woman" (*De sforzar femena*):

We order that if any man rapes a good woman who is not married, and the man is unmarried himself, we will it that he takes her as wife in legitimate marriage; and if the woman is married and the man who has raped her is married, we will it that he pays a fine of 50 perpers, of which half goes to the Prince and half to the woman, and of the aforesaid the woman must present good proof.

Ordinemus chi zaschaduno homo sforzassi alcuna bona femena non maritata per forza e lo homo non fosse uxorato, volemo che la toia per mulier per legitimo matrimonio; e si la femena fossi maritata e l'homo chi la sforza fossi uxorato, volemo chi paghi perperi L, la mità a lo conte e la mità a la femena, e questo dicemo se la femena provassi per bona prova.

other Mediterranean cities, with a strong influence from Venice and Dubrovnik (Ragusa), and the legacy of Roman law coming from the West, than to mainland Serbian law. It is disputable whether they belong at all to Serbian mediaeval law.

5 Injury (ἀδικία)

Injury is any wrong or damage done to another, either in his person, rights, reputation, or property. Serbian mediaeval law differs real injury and verbal injury (insult).

a) *Real Injury* is inflicted by any act by which a person's honor or dignity is affected. Serbian mediaeval law knows for two types of real injury: *plucking the beard* and *to pull off somebody's cap*.

Plucking the beard, so-called *mehoskubina* (МѢХОСКОУБИНА), is an obsolete word, no more used in modern Serbian language. It comes from the old, mocking term *meh* (МѢХЪ), meaning *hair, coat, fur*,⁵⁷ and the verb *skubati* (СКОУБАТИ) = *to pluck*.⁵⁸

Mehoskubina was mentioned in two charters preceding Dušan's Law Code. Saint Stephen's charter says that the fine for plucking the beard is the same as for refusal of judges envoy or clerk (МѢХОСКОУБИНА ЈАКО И УПЕШИ ...), i. e. 18 dinars.⁵⁹ But, later Gračanitza charter (1315–1321) simply says *plucking the beard* 6 dinars (МѢХОСКОУБИНА .S. ДИНАРЬ),⁶⁰ meaning that the amount of the fine is three times lower than prescribed by Saint Stephen's charter.

Dušan's Law Code contains two articles regarding plucking the beard (*mehoskubina*).

Chapter ССII, "Of a raped female servant" (*De ancilla sforzata*):

We order if any man rapes a female servant of any man or any woman and the female servant dies in parturition, we will it that the one who raped her must give to the female servant's master another female servant, and the son or the daughter given birth to by the female servant shall be servants of the said female servant's master.

Ordinemo algun homo sforzassi ancilla de algun homo over de àlguna femena a l'ancilla morisse in partu, volemò chi quello chi la sforzasse sia tenuto de dar a lo parone de la ancilla una altra ancilla, e lo fiulo over la fiola che fecissi la ancilla che sia serva over servo de lu parone de la dicta ancilla.

Statut grada Skadra, ed. Bogojević-Gluščević, pp. 176–177.

57 In modern Serbian *meh* (мех) means bellows (blacksmith bellows).

58 *Skubati* (скупаму) is no longer in use. The modern word is *čupati* (чупаму) = to pluck.

59 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

60 Ibid., p. 503.

Article 97, *Of the Lord's Beard* (Њ БРАДЪ ВЛАСТЪВНСКОИ): *Whoso shall pluck the beard of a lord or good man, both his hands shall be cut off* (КТО СЕ ВЕРЪТЕ ИСКΟΥБЪ БРАДЪ ВЛАСТЪВНИЪ, ИЛИ ДОБРЪ ЧЛОВЕКЪ, ДА СЕ ТОМУЪЗІИ ВЕРЪ РОУЦЪ ВЪТЪКЪ).⁶¹

Reverence for the beard, as a sign of dignity and honour, was so great that to pull it was a dire insult equivalent to murder, involving the same penalty of amputation of both hands (see article 87).⁶² However, such a penalty is present in the Struga and Prizren transcripts. Athos, Hilandar, Hodoš and Bis-tritza manuscripts have *his hand shall be cut off* (ДА СЕ ТОМОУЗИ РОУКА ВЪТЪКЪ).⁶³ In any case, the punishment is very severe and cruel.

What is meant by "good man", *dobar čovek* (добар човек), is uncertain. It seems to mean every respectable and honourable man from the ranks of the commoners. "It may be analogous to the *legalis homo* of Anglo-Roman law."⁶⁴

Article 98, *Of Commoner's Plucking* (Њ СКОУБЪЖЪ СЕБРОВЪ): *If two commoners pluck, the fine is six perpers* (И АКО СЕ ИСКОУБЪТА ДВА СЕБРА, МЕХОСКОУБИНЕ .S. перъперъ).⁶⁵

For the same crime the Code prescribes much milder fine in the case of commoners, but the amount that had to be paid is much higher than in Saint Stephen and especially Gračanitz charter. According to the latest researches one golden perper was settled accounts as 24 dinars. In the first half of the 14th century the rate was 1:30, and in the first half of the 15th century even 1:40.⁶⁶

To pull off somebody's cap was real injury prescribed with a second part of the article 166 (Of Drunkards): But if a drunken man molest anyone or pull off his cap⁶⁷ or do him other insult, but do not wound him, he shall be flogged with one hundred strokes and cast into prison, and when he is taken from prison he shall be flogged again and released (АЦЕ ЛИ ПІАН ЗАДЕРЕ, ИЛИ КАПОУЧЬ СЫИНЕ,

61 Burr, "The Code of Stephan Dušan", p. 216; Novaković, *Zakonik*, p. 75; *Zakonik cara Stefana Dušana*, vol. I, p. 108; vol. III, p. 126.

62 See R. Mihaljičić, "Brada", in *LSSV*, pp. 59–60. Plucking the beard and hair as a crime penetrated into Turkish legislation after the conquest of Serbia. See M. Begović, "Tragovi našeg srednjovekovnog krivičnog prava u turskim zakonskim spomenicima" ["Traces of Our Mediaeval Criminal Law in Turkish Legal Documents"], *ІЗ* 6 (1956), pp. 1–11, especially pp. 9–10.

63 *Zakonik cara Stefana Dušana*, vol. I, p. 186; vol. II, pp. 96, 134, 194, 249.

64 Burr, "The Code of Stephan Dušan", p. 216.

65 Burr, "The Code of Stephan Dušan", p. 217; Novaković, *Zakonik*, p. 75; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

66 See R. Ćuk, "Zlatnici" and "Novac", in *LSSV*, pp. 242–243 and 441–444.

67 The Serbian word is *kapuč* (каныч), coming from Italian *cappuccio* (Novaković, *Zakonik*, p. 246). In modern Serbian the word is *kapa* (кана). See Đ. Petrović, "Pokrivala za glavu", in *LSSV*, pp. 540–543.

или иноу срамотѣ оучины, а не окрѣвави, да га бїю, ѣ, стапїи, и да се врьже оу тѣмницоу, и потомѣ да се извѣде ис тѣмнице, и да се бїе и поустити).⁶⁸

Beside pulling off of somebody's cap, article 166 mentions "other insult", without denoting what kind of insult could it be. It is not clear, as well, how long a drunkard shall stay in prison.

Капа (cap) was a sign of dignity in Serbia, till the end of 19th century, and that is the reason why the penalty for pulling off of somebody's cap was so strict.

b) *Verbal Injury or Insult* (вп'сованїе, speak in a way that hurts or is intended to hurt a person's feelings or dignity) was prescribed by three articles of Dušan's Law Code.

Article 50, Of Insults to Gentlemen (Ѡ вп'сованїи властѣлнїкїа): If a lord insult and shame a lesser lord let him pay one hundred perpers. And if a lesser lord insult a greater, let him pay one hundred perpers and be beaten with sticks (Властѣлнїи кон вп'сѣїе и вѣсрамоти властѣлнїкїа да плати, ѣ, перѣперѣ; и властѣлнїи ако вп'сѣїе властѣлнїа, да плати, ѣ, перѣперѣ и да се бїе стапїи).⁶⁹

The contrast is here between the lord (magnate, *vlastelin*) and the mere gentleman (lesser lord, *vlateličić*). *Vlasteličić* could even *be beaten with sticks*, what is an exemption from the feudal rule that nobility cannot be punished by corporal penalties. According to Alexander Solovjev in the class of lesser lords (*vlasteličići*) could enter even some commoners who were able for military service. As they were not "nobility by birth" (hereditary nobility), they could be beaten with sticks.⁷⁰

Article 55, Of Insulting Lords (Ѡ вп'сованїи властѣлнїкомѣ): And if a commoner insult a lord, let him pay one hundred perpers and be signed. And if a lord or gentleman insult a commoner, let him pay one hundred perpers (И ако себѣрѣ вп'соуїе властѣлнїа, да плати, ѣ, перѣперѣ и да се осмудїи; ако ли властѣлнїи или властѣлнїи вп'сѣїе себѣра, да плати, ѣ, перѣперѣ).⁷¹

The inequality between estates is evident one more time: a commoner who insults a lord shall pay 100 perpers (what was for a peasant a tidy sum of money) and he shall be signed. Singeing (осмудити, *osmuditi*, *comburare capillos de capite et barbam*, burning of the hair and beard) a person who is alive was a

68 Burr, "The Code of Stephan Dušan", p. 532; Novaković, *Zakonik*, p. 131; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

69 Burr, "The Code of Stephan Dušan", p. 208; Novaković, *Zakonik*, pp. 43–44; *Zakonik cara Stefana Dušana*, vol. III, p. 112.

70 See A. Solovjev, "Seljaci–plemići u istoriji jugoslovenskog prava" ["Villagers–Noblemen in the History of Yugoslav Law"], *APDN XXXI/48* (1935), pp. 455–464.

71 Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 47; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

painful and dishonorable penalty. Infamous character of punishment is noticeable even in its Serbian expression—*smuđenje*, commonly used for pigs.⁷²

Similar difference in punishing for verbal injury between a villager and gentleman could be seen in the article 44 of the *Poljica Statute*⁷³ from 1440: *Who insults his own equal ... let him pay 5 livres. If a villager insults a gentleman, [the fine] shall be double. If a villager insults his lord, let his tongue be cut out or to redeem himself paying 100 livres* (Тко би опсовао свога дрѣга ... ѡпада либаръ .є. Тко ли би кметићъ опсовао племенита човика, тѣ є дѣпло. Тко би опсовао кметићъ свога господина, дѣжанъ є да мѣ езикъ ѡриже, али се искупи либаръ .р.).⁷⁴

Article 95 a, On Insult (Ѡ псоети): *Whoso insulteth a bishop, monk, or priest, he shall pay one hundred perpers* (КѠ ѡпсиє светителя или калѣгѣра, или попа, да плати, ѣ, перѣперѣ).⁷⁵

It is interesting that the fine for insulting was equal for all social classes. Clergy did not enjoy special status, like in the case of homicide (article 95 b).

Special case was article 111, entitled *On Disgracing Judges* (Ѡ соудѣине срамѣ) which protects the persons and dignity of the judges: *Whoso be found to disgrace a judge, if he be a noble, let all be taken from him; but if it be a village, let it be scattered and confiscated* (КѠ се наидє сѣдѣю ѡсрамѣтивъ, ако бѣудѣ властѣлинь, да мѣ се вѣсе ѡузме; ако ли село да се расѣтѣ и плѣнѣи).⁷⁶

The judges were by their very duties exposed to the anger of disappointed and often formidable, litigants and the Code protects their honour. The legislator used a verb *osramotiti*, meaning *to disgrace, dishonor, discredit*. It seems that the Code by the usage of the term *osramotiti* covered both types of injury—real and verbal.⁷⁷

72 Karadžić, *Srpski rječnik*, p. 472: *abfengen, amburo, ein Schwein*.

73 The Poljica Statute from 1440 is the most important historical source, written in Cyrillic, for the Republic of Poljica, an autonomous community which existed in the late Middle Ages in central Dalmatia, near the modern-day city of Omiš in Croatia. It was the result of the wish of the people of Poljica for stronger independence from the Kingdom of Hungary (Croatia) and the Republic of Venice.

74 Edited by V. Jagić, *Poljički Statut*, *MHJSM*, vol. IV (Zagreb 1890), p. 54.

75 Burr, "The Code of Stephan Dušan", p. 216; Novaković, *Zakonik*, p. 74; *Zakonik cara Stefana Dušana*, vol. II, pp. 194, 249; vol. III, p. 124.

76 Burr, "The Code of Stephan Dušan", p. 518; Novaković, *Zakonik*, p. 85; *Zakonik cara Stefana Dušana*, vol. II, 251, vol. III, p. 130.

77 Burr translated the beginning of article 111 as follows: "Whoso shall insult a judge". However, in translation of articles 50, 55, and 95a, he used the verb "to insult" for verbal injuries as well.

- “The one who abducted a virgin or a widow cannot enter into a marriage with her, even if her father gave a consent and pardoned a crime” (‘Ο παρθένον ἢ χήραν ἀρπάσας, οὐ δύναται ταύτην γαμεῖν, οὐδὲ συναινέοντος τοῦ ταύτης πατρὸς, καὶ συνχωροῦντος τὸ ἔγκλημα, Иже дѣвицу или вдовицу въсхитивъ, не можетъ сию имѣти женоу, ни же пристаюшюу тоѣ отцю, и пристаюшюу сыгрѣшеніе).⁴
- “An abducted woman is not to enter into a marriage with her abductor; if her parents gave consent for such a marriage, let them be sent into a dungeon” (Μη γαμείσθω ἡ ἀρπαγείστα τῷ ἀρπάσαντι αὐτήν, ἀλλ’ εἰ καὶ συναινέσουσι τῷ τοιούτῳ σινοικεσίῳ οἱ γονεῖς αὐτῆς περιορίζονται, Да не посагнетъ похыщен’наа за похытившаго ю, нь аще и пристаюутъ таковомоу съжител’ствоу родителіе еѣ, въ тѣмницуу вѣмѣтаютъ се).
- “An abducted woman shall receive the abductor’s estate, if she does not want to enter into a marriage with him; if she wanted to do that, both estates, abductor’s and hers, shall be confiscated, as well as the estates of accomplices in the crime, being parents or other people” (‘Η ἀρπαγείσα κερδαίνει τὰ τοῦ ἀρπαγος πράγματα μὴ θελήσασα συζευχθῆναι νομίμως αὐτῷ· ἐπεῖτοι γε, εἰ θελήσῃ τοῦτο, δημεύεται ἢ τε αὐτῆς περιουσία καὶ ἡ τοῦ ἀρπαγος, καὶ ἡ τῶν συναιρομένων ἐπὶ τῷ κακῷ, κἂν τε γονεῖς τούτων ὦσι, κἂν τε ἄλλότριοι, Ποхиштен’наа придобиваетъ похытив’шаго ю имѣніе не въсхотѣвши закон’но съпрѣшти се сънимъ; пониже бо, аште въсхотѣтъ се сътворити, расхыштаетъ⁵ се тоѣ имѣніе и хыштинѣе и съприставшихъ о злѣ, любо родителіе симъ боудуутъ, любо тоуждѣн).⁶
- “Abduction is worse than adultery; the one who abducted married woman or virgin shall be punished severely if someone accused him, even if the maiden’s father, after being begged, pardons him” (‘Η ἀρπαγὴ μείζων ἐστὶ τῆς μοιχείας· καὶ ὁ ἀρπάσας γεγαμημένην, ἢ παρθένον, ἐσχάτως τιμωρεῖται, καὶ ξένου κατηγοροῦντος, καὶ εἰ ὁ πατὴρ τῆς κόρης παρακληθεὶς συνεχώρησεν, Ποхиштеніе вештъше ѣстъ прѣлюбодѣиства; и похытивѣи посаг’шюу ю или дѣвицу, послѣдніе томимъ ѣстъ, и тоуждемоу на нь глаголюшюу, аште и отѣць отроковице, оумоленъ бывъ, простила ѣстъ).⁷
- “If a slave reported an abduction of a virgin, he would be released; or if he exposes an already committed and forgiven abduction” (‘Εὰν δοῦλος ἀρπαγὴν

4 *Basilika*, LX, 58, 1.

5 The Serbian translator used the verb *rashištati*, meaning to carry off, to snap up, while the Greek verb δημεύω means to confiscate (to the benefit of the State). I translated according to the Greek text.

6 *Iust. Novella* CXLIII, 1; *Basilika*, LX, 58, 5.

7 *Basilika*, LX, 58, 6.

παρθένου καταμηνύση, ἐλεύθερος γίνεται, ἢ ἐὰν τὴν ἤδη συγχωρηθεῖσαν ἀρπαγὴν ἀπελέγξῃ, Ἀπште рабъ похыштеніе дѣвице възвѣстити, свободу вываєть, или аште проштен'но быв'шее похыштеніе обличити').⁸

- “A slave who abducts or hides somebody else's harlot is not guilty, neither as a thief, nor as an abductor, because he did not do that with the intent to steal, rather from lust; a high official shall punish him with a fine and bring him to reason” (‘Ο δούλην ἄλλοτρίαν, πόρνην οὔσαν, ἀρπάζων ἢ κρύπτων, οὔτε ὡς κλέπτης, οὔτε ὡς ἀνδραποδιστὴς ἐνέχεται· οὐ γὰρ κλοπῆς ἀλλ’ ἡδονῆς χάριν τοῦτο πεποίηκε· πλὴν εἰς χρήματα ζημιοῦται παρὰ τοῦ ἄρχοντος, καὶ σωφρονίζεται, Рабъ тоуждою блудницею соуштоу похыштае или крые, ни же іако плѣн'ѣа повин'нь естъ; не бо тат'бы ради, нь сласти ради се сътвори; обауе въ иманіе отыштетекаєть се отъ кнеза, и цѣломоудритъ се).⁹
- “Justinian's Novella XVII forbids virgin abductors to be concealed in the places of asylum” (‘Η δὲ ἱζ'. 'Ιουστινιάνειος Νεαρά ἀπαγορεῦει ὄρους ἀσυλίας φυλάττεσθαι τοῖς ἄρπαξι τῶν παρθένων, Се д'мынадесята же югетиніанова Новаа отрицаєть прѣдѣлы некраденіа съхраниати хыштникомъ дѣвицьскими).¹⁰
- “On Easter Days virgin abductors must be imprisoned and bound” (Ἀλλὰ καὶ ἐν ταῖς ἡμέραις τοῦ Πάσχα, οἱ τῶν παρθένων ἄρπαγες ἐγκλείονται καὶ δεσμοῦνται, Нъ и въ дънехъ светые пасхы дѣвицьцѣи похыштници затварають се и вежогъть се).¹¹

Dušan's Law Code has no article regarding the crime of abduction. It seems that the strict provisions of Matheas Blastares' *Syntagma* were sufficient. It is possible that marriage by abduction existed as a custom in mediaeval Serbia, and that these rules were kept and meticulously reworked to fight against that custom.¹¹

Abduction was also considered a crime of violence in the legal acts promulgated after the death of Tsar Dušan. Despot Stefan Lazarević, for example, in the charter presented to the monasteries Tismany and Voditsa (1406), says that any man who has left the monastery's manor may come back, except persons who have committed the crimes of homicide, larceny or abduction (дѣвицо-похищитель).¹²

8 *Basilika*, XLVIII, 18, 3.

9 *Basilika*, LX, 12, 39.

10 Ed. Ralles and Potles, pp. 102–104; ed. Novaković, pp. 105–107.

11 B. Marković, “Krivično delo otmice devojaka i žena u zakonodavstvu cara Stefana Dušana” [“Crime of Abduction in Tsar Stefan Dušan's Legislation”], *IC* 56 (2008), pp. 241–260.

12 Ed. Mladenović, p. 352.

2 Fornication (πορνεία, блοудъ)

Fornication is sexual intercourse between two persons not married to each other. This offence is variously defined in modern law, and it is considered a crime in some States. Byzantine law severely punished sexual intercourse between a man and unmarried woman or widow,¹³ as a crime against morality.

The *Syntagma* of Matheas Blastares contains three chapters that concern it: Π-15, “On fornication” (Περὶ πορνείας, О блοудѣ); Π-16, “On those who wanted to commit fornication, but they did not” (Περὶ τοῦ πορνεῦσαι ἐπιθυμήσαντος, καὶ μὴ πράξαντος, О пожелаѣвшимъ съблοудити и не съдѣлавшимъ); Π-17, “On pimps” (Περὶ πορνοβοσκῶν, О блοуднициѡпасцехъ).¹⁴ However, Chapter Π-15 exposes only the numerous ecclesiastical rules on fornication and only one law which “orders that the one who has as concubine an irreproachable woman, he has to marry her, according to the law. And if she has carnal knowledges with other men and she is not satisfied with one person, let her be expelled from the fornicator’s home” (Ἄλλ’ ὁ νόμος, τὸν παλλακῇ σώφρονι χρώμενον, ἀναγκάζεσθαι κελεύει ταύτην καὶ νόμῳ γάμου λαβεῖν· τὴν δὲ καὶ ἐτέροις μιγνυμένην, καὶ μὴ τῷ ἐνὶ ἀρκουμένην προσώπῳ, καὶ τῆς οἰκίας τοῦ πορνεύοντος ἐξωθεῖσθαι, Нъ законъ, иже посадниѡу цѣломоу дръноу имѣе, поноуждену быти кѡму повелѣаетъ и закономъ брака сѣю поети; а иже и съ другыми смѣшаштеи се и не довлѣемон единѣмъ лицемъ, и изъ домоу блοудештаго изринотъи се).¹⁵

Chapter Π-16 has also only the ecclesiastical rules concerning the attempt to commit a crime of fornication and only one law which says “that it is better that sins remain unpunished, than that some persons who are not guilty be punished” (Φησὶ δὲ καὶ ὁ νόμος· Κρεῖσσον τὰ ἀμαρτήματα καταλιμπάνειν ἀνεκδίκητα, ἢ τινας ἀναίτιως κολάζεσθαι, Рече же и законъ: Лоушше кетъ съгрѣшенїа оставаѣати неотмыштенна неже-ли нѣкыѣ неповиннѣ моучити).¹⁶

Chapter Π-17 contains Canon 86 of Sixth Ecumenical Council, which orders that clerics who had gathered and held harlots were to be excommunicated and expelled (κληρικούς μὲν ὄντας, καθαιρεῖ· πρὸς ταύτῃ, κελεύει καὶ ἀφορίζεσθαι, причѣтники оубо соуште, къ изврѣженїю повелѣваетъ, и отлоучатъи соугроубо); if laymen, they were to be excommunicated (λαϊκούς δὲ, ἀφορίζεσθαι, людскыѣ же отлоучатъи). Canon 86 was then followed by four laws:

13 *Procheiron*, xxxix, 44, 59–61, ed. Zepos, vol. II, pp. 220, 223–224.

14 Ed. Ralles and Potles, pp. 433–440; ed. Novaković, pp. 458–465.

15 Ed. Ralles and Potles, p. 434; ed. Novaković, p. 459.

16 Ed. Ralles and Potles, p. 439; ed. Novaković, p. 464.

- “He who knows that his wife is a harlot, and keeps silent [about that], is a pimp” (‘Ο εἰδὼς πορνεύεσθαι τὴν ἑαυτοῦ γυναῖκα, καὶ σιωπῶν, πορνοβοσκός ἐστιν, Вѣдѣи блοудештоу свою женоу и мльче, блοудниѡнас’ць ѣсть).
- The second law says that children born of a debauchery (Οἱ ἐκ πορνείας γεγεννημένοι, Иже отъ блοудѣ родинѡи се) may inherit from their mother and their maternal relatives. “And a harlot, who has both, legitimate children and bastards [children born out of lawful wedlock, i.e. of a fornication], may not leave anything to her bastards, neither in her lifetime, nor on her death-bed” (ἡ δὲ ἱλλουστρία νομίμους ἔχουσα παῖδας καὶ πορνογενεῖς, οὐδὲν δύναται παρασχεῖν τοῖς πορνογενέσιν, οὔτε ζῶσα, οὔτε τελευτῶσα, блοудештиѡѡ же, закон’ные имоушти д’ѣти и блοудородниѣ, ничто же можетъ подати блοудороднымъ ни же живѣ соушти, ни же оумираюшти).
- The third says that inheritance of a bastard does not belong to the father’s relatives, because it was said that he has no father,¹⁷ and the inheritance shall be passed on to his mother and uterine brothers.¹⁸ The laws and canons on marriage recognise relationship by fornication, so if the relatives by fornication enter into a marriage, they shall be punished as those who have committed incest (‘Η τοῦ πορνογενοῦς κληρονομία οὐκ ἀνήκει τοῖς πρὸς πατρὸς συγγενέσιν, οὐ γὰρ λέγεται ἔχειν πατέρα, τῇ μητρὶ δὲ αὐτοῦ καὶ τοῖς ὁμομητρίοις ἀδελφοῖς· οἱ δὲ περὶ γάμων νόμοι, καὶ οἱ κανόνες ἐπιγινώσκουσι καὶ τὴν ἐκ πορνείας συγγένειαν, καὶ συναπτομένους τοὺς ἐκ πορνείας συγγενεῖς, ὡς τοὺς ἐξ ἐννόμων γάμων αἰμομιξία περιπεσόντας κολάζουσιν, блοудороднаго насѣдѣ не належитъ отчевѣымъ сьродникомъ, не во глаголетъ се имѣти отца, матеръ же его и единоматернымъ братѣямъ; закони же иже о брацѣхъ и правила повелѣвають и иже отъ блοудѣ сьродство сьблюдати, и сьвыкоуплаюштихъ се иже отъ блοудѣ сьродникъ, ѡкоже иже отъ законныхъ браковъ въ крьвомѣство выпадшихъ мочити).
- The fourth law concerns concubinage, which is recognized by the law; the one who has the honest woman as a concubine and who confirms that publicly seems to have her as consort. If that is not the case, he is guilty of fornication (‘Ο μέντοι παλλακισμός νόμιμός ἐστιν· ὁ γὰρ γυναῖκα σεμνὴν παλλακεύμενος, καὶ ποιῶν ἐν ἐκμαρτυρίᾳ τοῦτο κατάδηλον, ὡς γαμετὴν αὐτὴν ἔχειν δοκεῖ· εἰ δ’ οὐν, ἀσέλγειαν πρὸς αὐτὴν πλημμελεῖ, Посадничество же законно ѣсть, иже во женоу чистоу посадниѡу воде и творе въ освѣдокованѣи се гавлиенно, ѡкоже соугроужниѡу тоу имѣти свидитъ се; аще ли же ни, блοудомъ къ нѣи сьгрѣшаѣтъ).¹⁹

17 The mediaeval rule was: *Bastardus nullius est filius, aut filius populi* (“A bastard is nobody’s son, or the son of the people”).

18 A uterine brother or sister is one born of the same mother, but by a different father.

19 Ed. Ralles and Potles, pp. 439–440; ed. Novaković, p. 465.

It is noticeable that none of those laws have a criminal penalty. However, the most important rule on fornication, containing a fine for a seducer, was listed by Matheas Blastares, who was not a great lawyer, in Chapter Γ-30, entitled “On those who rape virgins”. The law, taken from the *Procheiron* (XXXIX, 65), orders that the one who had sexual intercourse with a virgin with her consent may enter into a marriage with her if this is agreed to by her parents. But, “if the parents of only one person do not consent, and a seducer is rich, he has to give one *litre* of gold to the seduced girl; if he is poor, half of his property; if he is very poor, let him be flogged, cropped and banished” (εἰ δὲ τοῦ ἐνὸς προσώπου οἱ γονεῖς τοῦτο οὐ καταδέχονται, εἰ μὲν εὐπόρος ἐστὶν ὁ φθορευς, τῇ φθαρείσῃ κόρῃ διδόντω λίτραν μίαν χρυσίου· εἰ δὲ ἐνδεής, τὸ ἥμισυ τῆς ὑποστάσεως αὐτοῦ· εἰ δὲ παντελῶς ἄπορος, τυπτόμενος καὶ κουρευόμενος ἐξοριζέσθω, **ΔΙΠΤΕ ΛΙ ΕΔΙΝΟΥ ΛΙΝΑ ΡΟΔΙΤΕΛΙΕ СЕ НЕ ПРИЕМАЮТЪ, ΔΙΠΤΕ ΟΥΒΟ ΒΟΓΑΤЪ ΚΕΣΤЪ ΡΑΣΤΛΙΒΥ, ΡΑΣΤΛΙΒШЕН СЕ ОТРОКОВИЦИ ДА ΔΑΣΤЪ ΛΙΤΡΟΥ ΕΔΙΝΟΥ ΖΛΑΤΑ; ΔΙΠΤΕ ΛΙ ΝΙШТЪ, ПОЛЪ СТЕЖАНІА НЕГО; ΔΙΠΤΕ ΛΙ ОТНОУДЪ ОУΒОГЪ, БЫЕМЪ И ОСТРЫЗАЕМЪ ДА ΖΑΤΑΚΑΙΕΤЪ СЕ**).²⁰ Finally, the *Syntagma* contained an even more specific rule regarding a man’s fornication with his underage betrothed in Chapter Μ-13 (again in an inadequate place), entitled “On betrothal” (Περὶ μνηστεῖς, Ο οβρογυени). If a man were to deflower his betrothed before her majority, i.e. the age of 13, her parents could break off the engagement and receive a third of his property (the same amount as for rape); if they did not want to break off the betrothal, the lascivious man had to wait the legal term for entering into marriage (ἀνάμενέτω τοῦ γάμου τὸν χρόνον, **ДА ОЖИДАЮТЪ БРАКА ВРЪМЕ**).²¹ The rule was accepted in article 139 of Dušan’s Law Code, in the Ravanitza manuscript.²²

Dušan’s Law Code contains only one provision on fornication, regulating a very specific form of illicit sex, in article 54 under the title “Of the fornication of a noblewoman” (Љ блондѣ владыке): “And if a noblewoman commit fornication with her man let the hands of both be cut off and their noses slit” (Ако ли владыка блондѣ оучини съ своимъ чловекомъ, да им се вѣѣма роукиѣ вѣѣкѣ, и носѣ оуреже).²³ The phrase “her man” signifies a commoner (*sebar*), most likely subjected to the noblewoman’s husband or father, unless she was

20 Ed. Ralles and Potles, p. 202; ed. Novaković, p. 211. The same provision is in the second part of article 138 of Dušan’s Law Code, Ravanitza transcript, but the penalty is different: “if he is very poor, his nose shall be cut off, he shall be imprisoned and flogged” (аще ли ест ницъ и ѡбогъ, да бѣдетъ вѣстризаетъ носомъ, и да се зачочитъ и вѣнетъ). *Zakonik cara Stefana Dušana*, vol. III, p. 334.

21 Ed. Ralles and Potles, p. 374; ed. Novaković, pp. 393–394.

22 *Zakonik cara Stefana Dušana*, vol. III, p. 334.

23 Burr, “The Code of Stephan Dušan”, p. 208; Novaković, *Zakonik*, p. 46; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

a widow. This rule is a compound of two similar clauses from the *Procheiron* (xxxix, 43 and 44), regarding a married lady's (γυνὴ ὑπανδρος, жена ѡтъ мѡужа) and a widow's (γυνὴ μὴ ἔχουσα ἄνδρα, жена не имѡущи мѡужа) intercourse with her slave (δοῦλος, рабъ),²⁴ already introduced into Serbian law in the *Zakon gradski*, but the penalty is much harsher (cutting off of both hands, Byzantine χειροκοπέω). Again, the Byzantine rules were obviously deemed insufficiently severe for such an insult to the honour of the nobility. That was the reason why Dušan's lawyers replaced the words "married lady" and "widow" with "noble-woman" (*vladika*), and the expression "slave" (*rab*) with "her man" (commoner, serf, villager or other dependent).

However, the Ravanitza copy also has two articles referring to fornication based on Matheas Blastares' *Syntagma*, but considerably modified:

Article 140:

If a man commit fornication with somebody else's wife, with a consent of that woman, and if he was married too and was caught, he has to pay 100 perpers, because he put to shame his comrade; and that woman shall be punished and tortured as a harlot.

Аще чловѣкъ блѣдѣ сътворитъ съ женою чѣждено мѣжатою, и то блѣдетъ съ хотениемъ жене тоѣ, а и тои чловѣкъ блѣде вженіень, те га ѡфате, да платитъ; ꙗ. пер'перъ, поніеже сътвори срамотѣ дрѣгѣ своемѣ. а та жена да примитъ казань и мѣчение ꙗко блѣд'ніца.

If a man was not married, and has committed [fornication] with a consent of that woman, let him pay 30 perpers; a woman shall be guilty as a harlot and her husband shall not receive her again in his home.

Аще ли чловѣкъ не блѣдетъ вженіень, и тои сътворитъ съ хотениемъ жени тоѣ, да платитъ; ꙗ. пер'перъ. а тѣ вьсѣ винѣ да под'лежитъ жена та ꙗко блѣд'ніца. и тои мѣжъ да се не приметъ въ домъ свои).

Article 141:

If she was a widow and she committed [fornication] by her own will, both of them have to pay *vražda*. If a man has committed [fornication] by force, let him pay 300 perpers and let him be beaten.

24 Ed. Zepos, vol. II, pp. 221–222; ed. Dučić, pp. 404–405; ed. Petrović, p. 324b.

Аще ли бѣдетъ вѣдовѣца, и сътворитъ съ хотѣниемъ, вѣое да под'лежеть
вѣраж'дѣ. аще ли чловѣкъ сътворитъ то насиліемъ, да платитъ; ꙗко перперъ,
и да га вѣютъ).²⁵

Although the editors of the Ravanitza text speak on fornication, in the wording of articles 140 and 141 they confused three crimes: fornication, adultery and rape.

3 Adultery (μοιχεία, прѣлюбодѣиство)

Adultery is voluntary sexual intercourse by a married person with someone other than his or her spouse or by an unmarried person with a married person.²⁶ In theory, it is easy to differentiate adultery from fornication (sexual intercourse between two unmarried persons), but a certain confusion between the two terms was widespread in Christian societies. Firstly, some deviations from the model frequently existed, e.g. a concubine's infidelity being classified as adultery, but a married man's intercourse with an unmarried woman as fornication. Secondly, the terms were sometimes used interchangeably.²⁷

Byzantine law punishes adultery very severely, and Matheas Blastares introduced in his *Syntagma* Chapter M-14, entitled "On adultery" (Περὶ μοιχείας, ὁ прѣлюбодѣиства).²⁸ At the beginning, this chapter contains eight ecclesiastical rules on adultery: Gregory of Nyssa's Rule 14, Canon 20 of the Synod of Ancyra, Rule 61 of Saint Apostles, Canon 8 of the Council of Neocaesarea,²⁹ and the Rules 34, 37, 39 and 56 of Basil the Great.³⁰ These ecclesiastical rules were followed by 13 laws. Two of them refer to bigamy, and they were erroneously placed in this chapter. The most important provisions of these laws are:

²⁵ *Zakonik cara Stefana Dušana*, vol. III, p. 334.

²⁶ Gregory of Nyssa (*PG*, vol. 45, 228C) defined fornication (πορνεία) as the satisfaction of desire without offending another person, whereas adultery (μοιχεία) is "a plot (ἐπιβουλὴ) and injury (ἀδικία)".

²⁷ Cf. A.E. Laiou, "Sex, Consent and Coercion in Byzantium", in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. A.E. Laiou (Washington D.C. 1993), pp. 109–222, especially pp. 114–120.

²⁸ Ed. Ralles and Potles, pp. 374–379; ed. Novaković, pp. 394–399.

²⁹ Under the title "Canon 8 of the Council of Neocaesarea" Matheas Blastares put together Canons 8 and 9 of the same Synod. Neocaesarea (Greek Νεοκαισάρεια) was an episcopal see in the late Roman province of *Pontus Polemoniacus*. It is the modern city of Niksat in Tokat Province, Turkey, with a population of 32,692.

³⁰ Ed. Ralles and Potles, pp. 374–377; ed. Novaković, pp. 394–396.

- “The one who has committed adultery with a woman cannot enter into a legitimate marriage with her” (Ὁ ἐπὶ μοιχείᾳ γυναικὸς κατηγορηθεὶς οὐ δύναται ταύτην γαμετὴν ἀγαγέσθαι, Иже о прѣлюбоѡдѣиствѣ жены оглаголанъ бывъ, не можетъ сию на бракъ привести).³¹
- “We order that all those who determine that their wives are adulteresses, and do not divorce from them, must be punished. A man who did not put away his wife who has committed adultery, is a pimp, i.e. a guardian of harlots” (Πάντας, ὅσοι τὰς γυναῖκας αὐτῶν μοιχευόμενος εὐρίσκοντες μὴ ἀπολύουσι, τιμωρεῖσθαι κελεύομεν· πορνοβοσκός ἐστιν, ὁ τὴν ἑαυτοῦ γαμετὴν μοιχευθεῖσαν μὴ ἀπολύσας, οὐ μὴν ὁ ψιλῶς ὑποπτεύσας, Вѣсѣмъ иелници жены свое прѣлюбоѡдѣиство творешите обрѣтаюште, не поустаютъ, томимомъ быти повелѣваемъ; издавыць кѣтъ, рекше блοудникопасѣць, иже свою женоу прѣлюбы сътворшоу не поустивъ, а не иже простѣ омишленіе приемъ).³²
- In the next law Matheas Blastares refers to Justinian’s *Novella* CXVII,³³ which orders that a wife who has committed adultery, after being punished with appropriate penalties, has to be sent to a monastery. Her husband, if willing, has a right to receive her back within the term of two years. If the husband died within this two-year cooling-off period without having received back his wife, “she was obliged to receive the tonsure and to take a veil” (κελεύομεν ἀποκείρεσθαι τὴν γυναῖκα, καὶ τὸ μοναχικὸν σχῆμα λαμβάνειν, повелѣваемъ постригити се женѣ и иноѣскимъ образъ въсприемати).
- We order that a husband who accused his wife for and found out that she had committed adultery, is entitled to retain the gift before marriage and the dowry, after the divorce (Εἰ περὶ μοιχείας ὁ ἀνὴρ κατηγορήσας τῆς γυναικὸς ἀπελῆγξειε, τῆνικαῦτα, χωρισμοῦ γενομένου, ἔχειν τὸν ἄνδρα κελεύομεν, πρὸς τῇ πρὸ γάμου δωρεᾷ, καὶ τὴν προῖκα; Аште о прѣлюбоѡдѣиствѣ моужь оглаголавъ свою женоу обличитъ, тогда, разложению бывшоу, имѣти моужоу повелѣваемъ въ иже прѣжде брака дароу и прикѣю). Besides that if the marriage was childless, a husband was to receive out of the wife’s remained property one third of the value of her dowry. If they had children, her dowry and her other property was to be kept for the children. An in flagranti adulterer as well as the adulteress were to be punished according to the law. If an adulterer was married, his wife shall retain her dowry and the gift before marriage; the remaining property of the adulterer is to be inherited by his collaterals up to and within the third degree. If he has no collaterals, his property

³¹ *Basilika*, VI, 19.

³² *Basilika*, LX, 38, 30.

³³ In fact it is Justinian’s *Novella* CXXXIV, 10.

кас, Иже прѣлюбодѣѣа съ своею женою въ съплетени постигъ, аще приключитъ се того оубити, не обвинюетъ се яко могужоубица; въ единомъ бо своемъ домоу, оубиѣтъ юнь, можетъ оубивати прѣлюбодѣѣа мужъ и сего скомраха или бесѣстна соуца; не дасть же се мужемъ оубивати прѣлюбодѣѣемыи ихъ жены).³⁸

- “A wife can be accused of adultery according to the statements of five witnesses; they must be her husband, her father, her brother, her paternal uncle and her maternal uncle” (θεῖος πρὸς πατρός, θεῖος πρὸς μητρός, στριψ, οуѣць).³⁹ If she was accused by other persons and the accusation was proved, the “adulteress shall be punished by the slitting of the nose” (ἐκτομή τῶν ῥινῶν οἱ μοιχοὶ τιμωροῦνται, отрѣзаниѣмъ носовъ прѣлюбодѣѣне томини соуць). But if the accusation was made with hostility, the accusers would be punished with the same penalty; “however, a wife who confesses that she has committed adultery shall be not punished, which is strange” (ἀλλ’ οὐδὲ αὕτη ἡ γυνὴ ὁμολογοῦσα μοιχευθῆναι καταδικάζεται, ὅπερ καὶ ἔστι καινόν, нь ни самаа жена исповѣдаюшти прѣлюбодѣѣствовати се ооуждаѣтъ се. еже оубо и кѣтъ ѡудно).⁴⁰
- “He who has committed adultery with the wife of his slave, or with a married but promiscuous woman, who has slept with many men, shall not be accused, neither for a crime of adultery nor fornication. The man shall be punished as an adulterer if the wife was raped without her consent, while her hands were held, even if she was ashamed to tell her husband what happened to her. The wife shall not be punished” (ὁ μοιχεύων τὴν γυναῖκα τοῦ ἀποδόουλου αὐτοῦ, καὶ ὁ μοιχεύων πολύφθορον καὶ πολύκοιτον ὕπανδρον, τῷ τῆς μοιχείας ἐγκλήματι οὐκ ὑπόκειται, εἰ μὴ τῷ τῆς πορνείας· καὶ ὁ μὲν ἀνὴρ τιμωρεῖται ὡς μοιχός, ἡ δὲ γυνὴ οὐκ εὐθύνεται, ὅτε ἄκουσαν καὶ βεβιασμένην αὐτὴν χειρὶ κρατήσῃ, εἰ καὶ αὕτη ἐρυθριῶσα, τὸ γεγονός εὐθὺς οὐκ ἀνήγγειλε τῷ ἀνδρὶ αὐτῆς, прѣлюбвы дѣѣи женоу рабѣишѣа своего, и прѣлюбодѣѣи много-горастлѣн’ноу и многоложноу мужатицоу, еже прѣлюбодѣѣства съгрѣшению подлѣжитъ, развѣ еже блонда оубо мужъ томиѣмъ кѣтъ яко прѣлюбодѣѣи, жена же не обвинюетъ се, кѣгда безъ воли и поноужден’ноу, тоу роукоу оудръжитъ, аште и та стыдѣшѣи се быв’шѣи двѣ не възвѣсти мужѣи свое-му).⁴¹

38 *Procheiron*, xxxix, 42.

39 Serbian has two different terms for paternal and maternal uncle. A father’s brother is *strie* (сѣпуц), while a mother’s brother is *ujak* (уѣак).

40 *Basilika*, lx, 37, 68.

41 *Basilika*, lx, 37, 39, 40, 62; *Syntagma*, ed. Ralles and Potles, pp. 377–379; ed. Novaković, pp. 396–399.

Among other Serbian legal sources, only article 30 of so-called “*Justinian’s Law*” treats adultery: “If someone seizes a foreign husband with his wife, and retains the wife, and leaves the husband, let him be punished as a thief and traitor” (Аџе кто оуѡвати моужа съ своєю женою, па женѣ оудържит, а моужа оупоустит, да се кажет ѡко тать и издавць).⁴² However, it is not clear what type of penalty there would be, because in mediaeval Serbia thief and traitor were not punished in the same way.

4 Bigamy

Bigamy is the state of a man who has two wives, or a woman who has two husbands, living at the same time. In modern law it is the criminal offence of wilfully and knowingly contracting a second marriage (or going through the form of a second marriage) while the first marriage, to the knowledge of the offender, is still subsisting and undissolved.⁴³ In Byzantine law, bigamy was the state of a man who has two wives, living at the same time.

Matheas Blastares introduced in his *Syntagma* two laws on bigamy, but he placed them in Chapter M-14, referring to adultery:

- “The one who has two wives has to be flogged and the concubine to be chased away together with the children to whom she gave birth” (‘Ο δύο γαμετάς ἔχων τυπτέσθω παρ’ αὐτοῦ τῆς ἐπεισάκτου γυναικός, μετὰ τῶν τεχθέντων ἐξ αὐτῆς παίδων, Иже двѣ женѣ имы, да биенъ боудеть, отгонимъ отъ него привъводиби женѣ съ рожден’ними отъ ниеѣ дѣтми).
- “The one who dares to have two wives, not according to the law but from lust, is guilty of adultery; because, he who coupled with a free woman while his prior spouse is still alive shall be condemned as a fornicator; but, if he has brought a second wife after entering into marriage, he shall be punished as an adulterer” (‘Ο δύο γαμετάς ἔχειν πειραθείς οὐ νόμῳ, ἀλλὰ φάκτω προαιρέσεως, ὑπόκειται τῷ τῆς μοιχείας ἐγκλήματι· ὁ μὲν γὰρ μετὰ ἐλευθέρας συμπλακείς, ζώσης τῆς αὐτοῦ γυναικός, ὡς πόρνος κατακρίνεται· ὁ δὲ κατὰ γάμου κοινωνίαν δευτέραν ἀγόμενος, ὡς μοιχὸς τιμωρεῖται, Иже двѣ женѣ имѣти покоусивъ се не закономъ нъ нравомъ произволениѣ, подлежит прѣлюбодѣвства сырѣшенію, иже бо оубо съ свободною сыплеть се живѣ соушти женѣ ѡго, ѡкоже блондникъ ооуждаеть се; а иже по бракоу приовштениѣ в’тороуо приведи, ѡко прѣлюбодѣи томимъ иестъ’).⁴⁴

⁴² Ed. Marković, p. 60.

⁴³ *Black’s Law Dictionary*, p. 163.

⁴⁴ Ed. Ralles and Potles, p. 379; ed. Novaković, pp. 398–399. Cf. *Basilika*, LX, 37, 84.

The Serbian editors of the *Abridged Syntagma* sorted these two laws into a separate Chapter M-4, entitled “On those who have two wives” (О ИМОУЦИНІМЪ ДВѢ ЖЕНѢ).⁴⁵

5 Abominable and Detestable Crimes against Nature

Abominable and detestable crimes against nature were in Byzantine law sodomy and pederasty. Matheas Blastares has several provisions concerning those crimes.

Sodomy (*sodomia ratione generis*) is the carnal copulation (sexual intercourse) by a man or woman with a beast, and Matheas Blastares defined it in Chapter A-5, under the title “On sodomites, i.e., those who are committing fornication with animals” (Περὶ ἀλογευσταμένων ἡτοὶ ζωοφθόρων, Ὁ βεζελовствовавшихъ, рекше животнаѧ растлѣвающтихъ).⁴⁶ At the beginning Chapter A-5 exposes the ecclesiastical rules referring to sodomy: Canons 16 and 17 of the Synod of Ancyra, Rule 63 of Basil the Great and the Third Rule of Gregory of Nyssa. All those rules contain severe *epitimions* (Greek ἐπιτίμιον, a penalty imposed on a penitent by the priest following sacramental confession; ecclesiastical punishments for some spiritual offence) as repentance of sins to provide reconciliation with God through means of healing.⁴⁷ The chapter finishes with only one law, ordering: “To those who have committed fornication with unreasonable animals, let their shameful members be cut off” (Οἱ ἀλογευστάμενοι ἡτοὶ κτηνοβάται, καυλοκοπείσθωσαν; βεζελовствоуштен сирѣчь ско-толожци срамныхъ оудовъ да отсѣкоуть се).⁴⁸

The Poljica Statute mentions sodomy in article 84a, but provides a different penalty: “If someone has committed an improper sin, which is called the sin of sodomy, be it male or female ... let him be burned without any mercy” (Ако би се тко наша ѿ грихѡ неподобенѡ, ча се зове грихѡ содомски, али би била мѡшкѧ глава али женскѧ ... има се сажгати преза всакога смилванѡѧ).⁴⁹

Pederasty (παιδεραστία, ἀρρενομιξία, ἀρρενοκοιτία, μοужененствоуство, *sodomia ratione sexus*) as a form of sodomy is the carnal copulation of male with

45 Solovjev, *Zakonodavstvo Stefana Dušana*, pp. 491 and 539.

46 Ed. Ralles and Potles, pp. 78–79; ed. Novaković, pp. 81–83.

47 In the Eastern Orthodox Church *epitimion* were provided by special *epitimal nomokanons* (*libri poenitentiales*).

48 Ed. Ralles and Potles, p. 79; ed. Novaković, p. 83. The rule was accepted by article 128 of Dušan's Law Code, Ravanitz copy. See *Zakonik cara Stefana Dušana*, vol. III, p. 330.

49 Ed. Jagić, p. 90.

male, particularly of a man with a boy. It was common in the Late Roman Empire when an abundance of young slaves and eunuchs created favourable circumstances for its practice. Many Church Fathers inveighed against this form of sexual activity. Denounced by the Church as criminal and contrary to Holy Scripture, pederasty was prohibited by Justinian's *Novels* LXXVII and CXLII, which repeated the punishment of death by the sword decreed by the *Codex Theodosianus* (IX, 7,3). The same punishment was imposed by the *Ecloga* (XVII, 15) and *Ecloga aucta* (XVII, 6);⁵⁰ the latter exempted youths under 15 from the death penalty, sentencing them instead to flogging and confinement in a monastery. Ecclesiastical law punished the sin with two or three years of *epitimion*.⁵¹

Matheas Blastares defined this crime in Chapter A-14, entitled "On pederasty" (Περὶ ἀρρενομανίας, Ο ΜΟΥΓΕΝΕΙΣΤΟΒ'ΕΤΕΤ'Ε).⁵² The chapter contains Rules 7 and 62 of Basil the Great, the Third Rule of Gregory of Nyssa, one Rule of John the Faster (Ιωάννης Νηστευτής, ЮАНЬ ПОСТНИКЪ)⁵³ and only one secular law.⁵⁴

Dušan's Law Code has no provisions on pederasty, but article 38 of the so-called "*Law of Emperor Constantine Justinian*", the Byzantine-Serbian compilation dating from the last quarter of the 17th century, orders: "If the [male] person has unnatural sexual intercourse with another male, let them both be burned alive, except if one of them is younger than 12 years, because of his age" (Аще кто с мѡжаскимъ ли полоумъ блѡдъ сътворить да се ѡтнемъ оное сажежеть, развѣ маныше ѡт .ѡ. лѣтъ, по подобии възраста).⁵⁵

6 Incest

Incest (αἰμομιξία, lit. "mixing of blood", Latin *incestus*, КРВОМѢСЦИ) is the crime of sexual intercourse or cohabitation between a man and woman who are related by consanguinity (blood) or affinity in such a way that they cannot legally marry. Affinity is the relationship that one spouse has to blood relatives of the other. In modern law a person is guilty of incest if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant. "Cohabit"

50 Ed. Burgmann, p. 238.

51 See J. Herrin, "Homosexuality", in *ODB*, pp. 945–946.

52 Ed. Ralles and Potles, pp. 104–105; ed. Novaković, pp. 107–108.

53 John IV, also known as John the Faster, was the 33rd Patriarch of Constantinople (582–595). He was the first to assume the title of Ecumenical Patriarch, and he is regarded as a saint by the Eastern Orthodox Church, which holds a feast on 2 September.

54 The law was mentioned above in Chapter 16, section 1.

55 Ed. Andréev and Cront, p. 53.

means to live together under the representation or appearance of being married. In common law, people could not marry the following relatives: a) *consanguinity*: mother or father, grandmother or grandfather, daughter or son, granddaughter or grandson, aunt or uncle, sister or brother, niece or nephew; b) *affinity*: stepmother or stepfather, step-grandmother or step-grandfather, stepdaughter or stepson, step-granddaughter or step-grandson, mother-in-law or father-in-law, grandmother-in-law or grandfather-in-law, daughter-in-law or son-in-law, granddaughter-in-law or grandson-in-law.⁵⁶

Byzantine law was more strict, adding to all existing prohibitions a spiritual relationship. Criminal penalties on incest were placed by Matheas Blastares in Chapter Γ (G) - 9, entitled "On unlawful and inappropriate marriages between relatives" (Περὶ γάμων παρανόμων καὶ ἀθεμίτων συγγενεικῶν, Ὁ βραυτῆχъ законнопрѣстоупниихъ и неполѣт'ниихъ сырод'ниѣьскыихъ).⁵⁷ At the beginning Matheas Blastares explains what types of unlawful marriages exist (Τῶν μὴ ἐννόμως γινομένων γάμων, Ὁ ἰκε νόμον'νο βυβαύωштихъ браковъ): marriages contracted with relatives and heretics are called inappropriate (ἀθέμιτοι, нелѣпот'ни); illegal (παράνομοι, законнопрѣстоупни) are marriages between guardians and wards. If someone enters into a marriage with a maiden dedicated to God (ἀνατεθειμένης τῷ Θεῷ, съ възложен'ною Богови), this type of marriages was called "condemned" (κατάκριτοι, осужден'ны). "In Latin [language] illegal marriage is called *nefarios*, condemned *damnatos*, and inappropriate *incest*" (Λατινικῶς δὲ, ὁ μὲν παράνομος γάμος λέγεται νεφάριος, ὁ δὲ κατάκριτος, δαμνάτος, ἵγκεστος δὲ, ὁ ἀθέμιτος, Λατιν'скѣи же законнопрѣстоупни оубо бракъ глаголетъ се нафарѣонъ, осужден'ны же дамнатонъ, игнеть же нелѣпот'ни).⁵⁸ Another title is "On clerics who enter into inappropriate marriages" (Περὶ κληρικῶν ἀθεμιτογαμούντων, Ὁ причѣтницехъ нелѣпотнобращештихъ се), exposing three ecclesiastical rules. First, Saint Apostles Canon 19, saying that anyone who has entered into a marriage with their wife's sister, after divorce or the wife's death, cannot be a cleric. Every inappropriate marriage, related by consanguinity or affinity (πᾶς γὰρ ἀθέμιτος γάμος, εἴτε ἐξ αἵματος, εἴτε ἐξ ἀγχιστείας, всакыи бо нелѣпотныи бракъ, люво отъ крѣве, люво отъ сват'ства), has to be dissolved. Any cleric who contracted such a marriage would be banished from the clergy and punished with *epithemia*. Second, Rule 27 of Basil the Great says that every priest who entered into any type of unlawful marriages (blood relationship, marriage with a nun or ward) through ignorance cannot be a presbyter and must ask for repentance

56 Brown, *Legal Terminology*, p. 132; *Black's Law Dictionary*, p. 761.

57 Ed. Ralles and Potles, pp. 165–169; ed. Novaković, p. 177.

58 Ed. Ralles and Potles, p. 165; ed. Novaković, p. 172.

of sins. Third, Canon 26 of the Sixth Ecumenical Council says that any inappropriate marriage must be dissolved.⁵⁹

Under the title “On laymen who enter into inappropriate marriages” (Περὶ λαϊκῶν ἀθεμιτογαμούντων, О людскихъ нелѣпотно брачештихъ се) we can find 12 ecclesiastical rules which strictly forbid illicit marriages.⁶⁰

Chapter Γ (G) - 9 finishes with five laws. Three of them refer to incest, all taken from the *Procheiron* and already known in Serbia from the so-called *Zakon Gradski* (translation of the *Procheiron*):

- Persons related by consanguinity (οἱ αἰμομίχται, κρвомѣци) who entered into a marriage, either parents with children or brothers with sisters, would be executed by sword. If they were in some other degree of kinship and they entered into a marriage—for example a father with his son’s wife, or a son with his father’s consort, i.e., stepmother, or a stepfather with his stepdaughter, or a brother with his brother’s spouse, or an uncle with a niece, or a nephew with an aunt, or with two sisters, or with somebody else’s mother and her daughter—and it was known that they had sexual intercourses, they would be flogged and their noses cut off.⁶¹
- If first cousins (ἐξάδελφοι, брадоугредіе) entered into a marriage or had sexual intercourse, and even if children were born, or a father and son with a mother and daughter, or two brothers with two sisters, or two brothers with mother and daughter, they were to be separated and flogged.⁶²
- If someone lived in a marriage or in any other secret union with his god-mother (συντέκνω, когмою), both consorts would have their noses cut off. If a wife was married, she had to be flogged.⁶³

The mildest punishment was prescribed for sexual intercourse with a mother-in-law—only *epithemia*, mentioned by the *Abridged Syntagma* (Chapters Γ-9 and Μ-6, entitled Ο ρατλήψιμις се съ своею тѣцею).⁶⁴

Dušan’s Law Code does not contain any article referring to incest. It seems that the editors of the Code considered that the provisions presented in the *Procheiron* and *Syntagma* were sufficient.

59 Ed. Ralles and Potles, pp. 165–166; ed. Novaković, pp. 172–174.

60 Ed. Ralles and Potles, pp. 166–168; ed. Novaković, pp. 174–176.

61 *Procheiron*, xxxix, 69.

62 *Procheiron*, xxxix, 72.

63 *Procheiron*, xxxix, 63. *Syntagma*, ed. Ralles and Potles, 168–169; ed. Novaković, pp. 176–177.

64 Cf. Solovjev, *Zakonodavstvo Stefana Dušana*, p. 492.

Crimes against Property

1 Larceny (κλέμμα, κλοπή, *furtum*, ТАТѢБА, ΚΡΑΓΙΑ)

Larceny is the wrongful taking and carrying away of the personal property of another with the intent to steal.¹ The essential elements of a larceny are an actual or constructive taking away of the goods or property of another without the consent and against the will of the owner or possessor and with felonious intent to convert the property to the use of someone other than the owner.²

Byzantine law has no definition of larceny, but it contains lots of provisions referring to this most frequent crime against property. Matheas Blastares introduced in his *Syntagma* the separate Chapter K-23, entitled “On larceny” (Περὶ κλοπῆς, Ο ΤΑΤ’ΕΤΒ). The chapter contains three ecclesiastical rules (Rule 61 of Basil the Great, Rule 8 of Gregory of Nyssa and Rule 11 of Gregory Thaumaturgus) and 10 laws, mostly taken from the *Procheiron* and *Basilika*.³ We have to note that Byzantine and Serbian legal sources very often mention larceny and robbery in the same place.

- “Those who steal in any town, if they are free but poor (ἐλεύθεροι μὲν ὄντες, ἄποροι δὲ, СВОБОДНІИ ОУБО СОУШТЕ, НИШТИ ЖЕ) and if they did that only once, let them be flogged. If they are rich they have to return double value of the stolen property to the owner. If they would be caught twice, let them be banished. If they dare to do that for the third time, let them both hands be cut off (χειροκοπεῖσθωσαν, РОУЦѢ ДА ОТСѢКОУТЬ СЕ ИМЬ).”⁴
- “If it was sold something that was recklessly taken or improperly stolen, it must be disposed of without compensation of the paid price” (Τὸ προπετῶς ληφθέν, ἢ ἀτόπως κλαπέν, εἰ πραθείη, διεκδικεῖται, μὴ καταβαλλομένου τοῦ δοθέντος ὑπὲρ αὐτοῦ τιμῆματος; Иже неприлич’нѣ възетоу или без’мѣстнѣ оукраден’ное аште продасть се, въземлиеть се, непращтаемь дан’нои о немь цѣнѣ).⁵

1 According to the Roman *iurisconsultus* Paulus (D. XLVII, 2, 1, 3), *Furtum est contrectatio rei fraudulosa lucri faciendi gratia vel ipsius rei vel etiam usus eius possessionisve. Quod lege naturali prohibitum est admittit* (“Theft is a fraudulent interference with a thing with a view to gain, whether by the thing itself or by use of possession of it. This natural law proscribes”). English translation by Watson, *The Digest of Justinian*, p. 251.

2 Brown, *Legal Terminology*, p. 95; *Black’s Law Dictionary*, p. 881.

3 Ed. Ralles and Potles, pp. 332–334; ed. Novaković, pp. 351–353.

4 *Procheiron*, XXXIX, 54.

5 *Basilika*, XV, 1, 102.

- “If someone takes possession of a thing which has no owner, he is guilty for larceny, except if a former owner has finally abandoned it. Than, if a thief takes it, he is not guilty any more for larceny, because the thing has no owner. If someone thought that a thing was left purposely, and it is not, he is not a thief. If someone took a thing with the intention to return it to the owner, he is not guilty for larceny, even if he got a reward.”⁶
- “Who is stealing in the army, if he stole weapons, let him be flogged; if he stole a horse, let his both hands be cut off” (‘Ο κλέπτων ἐν φωσσάτῳ, εἰ μὲν ὄπλα, τυπτέσθω· εἰ δὲ ἵππον, χειροκοπέσθω; Крaдѣи въ воицѣ, аште оубо ороуѣѣ, да вьнень боудеть; аште ли коня, да оубокоуѣ се емоу роуѣѣ).⁷
- “If a master of slave-thief wants to keep his slave, he must indemnify the stolen; if he does not want, he has to give him to the damaged in full ownership” (‘Ο τοῦ κλέπτου δούλος κύριος, εἰ μὲν βούλεται ἔχειν τὸν οἰκέτην, τὸ ἀζήμιον ποιείτω τῷ τὴν κλοπὴν ὑποστάντι· μὴ βουλόμενος δὲ, τοῦτον αὐτῷ ἀποδιδότω εἰς τελείαν δεσποτείαν; Иже рабоу татєви господинь, аште оубо хоштеть нимѣти раба, безъ тыштети да сътворитъ иже оукраденіе подємшаго; не хоте же, сего томоу да подасть в събрьшеніе владычєство).⁸

The next law is similar to the first one, but it refers to the ox-thieving (ἀγέλας, βοή): “those who have committed the crime only once, shall be flogged. If they do that for the second time, they shall be banished, and for the third time their hands shall be cut off”.⁹

The following lines of the Chapter K-23 are dedicated to robbery.

Serbian legal sources have no definition of larceny, and they use two different words to denote this crime: *krada* (κρaђa, κpагa)¹⁰ and *tatba* (тaтбa, тaтѣбa)¹¹ = larceny, theft, stealing, thieving. *Krada* is in use in modern Serbian, while *tatba* is obsolete. The verb “to steal” is *krasti* (κpαcти, κpαcти) or *ukrasti* (yκpαcти, yκpαcти),¹² also in use in modern Serbian, while the substantive “thief” is *tat* (тaт, тaтѣ),¹³ rarely utilized today (the modern term is *lopov*,

6 *Basilika*, LX, 12, 42.

7 *Procheiron*, XXXIX, 53.

8 *Procheiron*, XXXIX, 55.

9 *Procheiron*, XXXIX, 56. *Syntagma*, ed. Ralles and Potles, pp. 333–334; ed. Novaković, pp. 351–352.

10 Saint Stephen's charter (Mošin, Ćirković, and Sindik, *Zbornik*, pp. 465, 468); King Dušan's chrysobull to the monastery of Htetovo from the year 1343 (SSA 13 [2014], p. 150).

11 Prince Lazar's treaty with Dubrovnik from 9 January 1387 (ed. Mladenović, p. 192).

12 Saint Stephen's charter; Gračanitza charter (Mošin, Ćirković, and Sindik, *Zbornik*, pp. 465 and 503); Prince Lazar treaty with Dubrovnik 1387 (ed. Mladenović, pp. 192–193).

13 Saint Stephen's charter, Charter of Archbishop Nikodim to Saint Sabba's from Jerusalem Kellion in Karea, from the year 1321 (Mošin, Ćirković, and Sindik, *Zbornik*, pp. 464 and

лонов). For the crime of larceny, Dušan's Law Code always uses the expression *krada* (articles 149, 158), but for a perpetrator of the crime *tat*.

The penalty for larceny was a fine in cattle, obviously a relict from customary law. The only surviving evidence can be found in Saint Stephen's charter which says: "For mutual larceny [i.e. between the monastery's villagers] six oxen and for horse-thieving only six horses" (И крада мегюсовна .S. воловь, а кон'ска самъ .S. конь).¹⁴ It is clear that the provision from Saint Stephen's charter had a local character. It was applicable only on the monastery's manor and for the monastery's villagers. So, if a thief was from the Saint Stephen's estate he had to give six oxen. A person who stole a horse had to return the stolen animal and give five horses more. It is certain that other rules were valid for different social classes, and that the fines were in money, but the sources are silent on that topic. However, King Stefan Uroš III Dečanski's chrysobull to the monastery of Saint Nicholas Mrački in Orehovo (9 September 1330) mentions a horse-thief (коньскы тать),¹⁵ but regrettably it does not prescribe a penalty for the crime.

Dušan's Law Code has no a single article that defines and treats larceny as a separate crime. However, several articles mention larceny, glancing references to something very well known. For example article 116, entitled "On finding" (Њ вѣрѣтели), orders: "If any man find anything within my territory, let him not take it ... If any man take or seize anything, let him pay what a thief and robber would pay" (Кто цю наиде оу царевѣ земли, да не оузме ... ако ли похвати или оузме, да плати цю тать, или гоусарь).¹⁶ Article 92 refers to *vindicatio*, the claiming of a stolen thing as one's own.¹⁷ Article 103 mentions larceny as one of the "pleas of the crown".¹⁸ Article 126 treats the collective liability of the neighbourhood (*okolina*, околина) for robbery and larceny.¹⁹ It seems that the editors of Dušan's Law Code thought that the provisions of Matheas Blastares' *Syntagma* were sufficient and clear. For that reason they did not consider it necessary to prescribe a penalty for larceny.

Mediaeval law marked a difference between *furtum occultum*—secret theft—and *furtum manifestum*—open theft where a thief is caught with the

527); King Stefan Uroš III Dečanski's chrysobull to the monastery of Saint Nicholas Mrački in Orehovo from the year 1330 (SSA 1 [2002], p. 58); Tsar Dušan's treaty with Dubrovnik, 20 September 1349 (SSA II [2012], p. 39).

14 Mošin, Ćirković, and Sindik, *Zbornik*, p. 468.

15 Edited by S. Mišić, SSA 1 (2002), p. 58.

16 Burr, "The Code of Stephan Dušan", p. 519; Novaković, *Zakonik*, 89; *Zakonik cara Stefana Dušana*, vol. III, p. 130.

17 We shall comment on article 92 in the next chapter.

18 See next chapter.

19 See Chapter 17, section 1.

property in his possession.²⁰ For a thief caught in the act Slavonic laws have the expression *obličeniĭem* (вѣличенієм) or *licem* (лицемъ), which underlines a moment of taking in the act. In Old Serbian *lice* does not mean *person* (as it does in the modern language), but “a thing”, in the case of larceny a “stolen thing”—*corpus delicti*. A thief caught in the act was called *oblični tat* (вѣлични тать).²¹ This is clear from article 149 of Dušan's Law Code:

And in this manner shall a brigand or thief be punished, who is taken in the act. He is deemed guilty if there be found on him a stolen thing, or if he be taken in the act of robbing or thieving, or when they are handed to the county or to the village, or to the headmen or to the lord who is over them, as written above. And these brigands and thieves shall not be pardoned but blinded and hanged.

Сим'зи вѣразомъ да се каже гоусаръ и тать вѣлични; и такози въ вѣличеніе, ако се цю годѣ лицемъ оухвати оу ныхъ, или ако оухвате оу гдси или оу краге, или ихъ прѣдадоу ждпѣ, или селымъ, или господаремъ, или властѣлинѣ кои ѣ надъ нымъ, како ѣсть выше оуписано, тызи гоусарѣ и тати да се не помилоуѣ, да се вслепѣ и вѣтѣсе.²²

So, the penalty for a thief caught in the act (*oblični tat*) is blinding (cf. article 145, which treats the professional brigand and thief), what could also be a relic from customary law.

Articles 8, 9 and 10 of the so-called “*Law of Emperor Constatine Justinian*” treats new types of larceny. According to article 8, if someone steals in an orchard or a vegetable patch (градѣ, или вѣоцѣ), let him be beaten and pay 12 perpers, if he has committed a crime for the first time; for the second and third time, he must pay 40 perpers. Article 9 orders:

If someone during the day, walking on the road enters in a vineyard or in an orchard and starts picking grapes and fruits, if he took it in his hands or in a scarf, he shall not be tried (тои не сѣдитъ се). If he picks it in a basket (лицѣи вакоцѣ верѣтъ), let him be beaten and let him pay 12 perpers. If

20 According to Teodor Taranovski (*History*, vol. II, pp. 94–95), the Latin term *furtum manifestum* is not adequate, because every larceny connotes the secret taking of somebody else's thing. He thinks that the German expression *handhafte That* is better.

21 As well as *oblični gusar*, a brigand taken in the act.

22 Burr, “The Code of Stephan Dušan”, p. 527; Novaković, *Zakonik*, p. 116; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

he picks during the night in purpose to eat, let him pay 20 perpers and be beaten. If he was picking to produce the wine, he has to pay all that he picked and 40 perpers more and he shall be beaten.

Article 10 prescribes:

If someone picks somebody else's corn by hand and takes it away in his hands, let him be beaten and not punished with other penalties. If he cuts with a sickle (АКОЛИ ЖНЕТЬ СЪПОМЬ), he has to pay triple value and he has to be beaten. If he is very poor and if he did that forced by famine, let him pay for the damage done what the valuers (ДЪШЕВЬНИЦИ) assess and be beaten but not so strongly (НЪ НЕ ВЕЛЪ МИ), in order not to do that again.²³

However, so-called “*Law of Emperor Constantine Justinian*” was composed in the 17th century and does not reflect the legal conditions of Serbian mediaeval law.

2 Sacrilege (*sacrilegium*, ιεροσυλία, свештен’нотат’ство)

Sacrilege is larceny from a church, i.e. the stealing of sacred things, or things dedicated to sacred use (taking of things out of a holy place). In Byzantine law sacrilege is considered as grand larceny. Already *Ecloga* XVII, 15²⁴ prescribed penalties for sacrilege. The rule from the *Ecloga* was accepted by the *Procheiron*, and it became known in mediaeval Serbia through its Slavonic translation (*Zakon gradski*). The provision is as follows: “Whosoever enters, during the day or night, into the altar and steals something shall be blinded; if he steals in a church out of an altar, he shall be beaten like a profaner and than shorn and banished” (‘Ο ἐν θυσιαστηρίῳ ἐν ἡμέρᾳ ἢ ἐν νυκτὶ εἰσιὼν καὶ τῶν ἐν αὐτῷ ἱερῶν τι ἀφελόμενος τυφλούσθω· ὁ δὲ ἔξω τοῦ θυσιαστηρίου ἐκ τοῦ ἄλλου ναοῦ ἀφελόμενος, τυπτόμενος καὶ κουρευόμενος ἐξοριζέσθω, Иже въ вѣлѣтарѣ въ днѣ или въ нощи вѣходѣ вѣ соущиѣхъ въ немѣ свещенїи нечѣто оукрадаѣ, да вслепитъ се; аще же вѣнѣ вѣлѣтарѣ вѣтѣ инниѣ црьквѣ оукрадеѣтъ что, внемѣ и вѣстриженѣ вѣтѣ прѣдѣлѣ да ижденеѣтъ се).²⁵

23 Andreiev and Cront, *La loi de jugement*, pp. 28–30.

24 Ed. Burgmann, p. 230. Cf. D. XLVIII, 13, *De legem Iuliam peculatus et de sacrilegis et de residuis* (16 fragments).

25 *Procheiron*, XXXIX, 58, ed. Zepos, vol. II, p. 222; ed. Dučić, pp. 407–408; ed. Petrović, p. 325b.

Matheas Blastares in his *Syntagma* created a separate Chapter I (ЇЖЕ) - 1, entitled “On holy equipment and sacrilege” (Περὶ ἱερῶν σκευῶν καὶ ἱεροσυλίας, О сѡештен’ныиѡхъ сѡсудѣхъ²⁶ и сѡештен’нотат’ствѣхъ).²⁷ The first part of the chapter contains three ecclesiastical rules: Saint Apostles’ Canon 72, Canon 10 of so-called “First-Second” Concil²⁸ and Rule 8 of Gregory of Nyssa. The exposed ecclesiastical rules speak out against sacrilege, because, as Saint Gregory said, “sacrilege was considered none the better than homicide, while the Holy Scripture wrote that the murderer and the one who stole objects dedicated to God shall be stoned to death” (Ἡ ἱεροσυλία παρὰ μὲν τῇ ἀρχαίᾳ καὶ θείᾳ Γραφῇ οὐδὲ ἐνομίσθη τῆς φονικῆς κατακρίσεως ἀνεκτοτέρα· ὁμοίως γὰρ ὁ, τε φόνῳ ἄλλοις, καὶ ὁ τὰ ἀνατεθέντα τῷ Θεῷ ὑφελόμενος, τὴν διὰ τῶν λίθων τιμωρίαν ὑπέσχον, Сѡештен’нотат’ство отъ дрѣвнаго оубо писанїа, ни҃чимъ же въз’мнѣ се оубїишт’внаго осужденїа отъ ради҃ише, подобнѣ бо иже оубїишт’вомъ обыетъ бывїи, и възложен’наа Богови отїемъ, иже каменїемъ томленїе подемахочу).²⁹

The second part of Chapter I-1 contains three secular rules, all taken from the *Basilika* (LX, 45, 12):

- “A crime of sacrilege is the same thing as a crime of high treason” (Τὸ περὶ ἱεροσυλίας ἔγκλημα ὁμοίός ἐστι τῷ τῆς καθοσιώσεως, ἔже сѡештен’нотат’ства сыгрѣшенїе подобно їестъ неверѣ царскѡи).
- “The law on sacrilege is enforced on those persons who have stolen something from holy property, to fill his own need, or he fraudulently acted as an aider” (Ὁ περὶ τῆς ἱεροσυλίας κινεῖται νόμος κατὰ τοῦ ὑφελομένου ἐκ τῶν ἱερῶν χρημάτων, ἢ χρησαμένου τούτοις εἰς ἰδίας χρείας, ἢ παρασκευάσαντος κατὰ δόλον γενέσθαι τι τούτων, Иже о сѡештен’нотат’ствѣхъ подвижетъ се законъ на

26 The Slavonic word *sasudi* (*cacydu*) is a denomination for ecclesiastical and liturgical equipment used in church services, such as *putir* (*nytur* = chalice, communion cup, poterion), *diskos* (*diskos* = paten, discus), *zvezdica* (*zvezduica* = asterisk, star-cover, holy star), *ripida* (*punuda* = rhipidos, sacramental fan, flabelum), *kašičica* (*kauiuiua* = communion spoon), *koplje* (*konʹe* = lance, shaft, javelin, spear), *guba* (*zyba* = sponge), *antimins* (*antiminc* = ante-mensa, antimensium, antimens, corporal, Vice-Altar), *kadionica* (*kadionuica* = incense box, censer, flagrant box, incensory, thurible), *darohranilica* (*darohraniluica* = arthophorion, Holy Gifts tabernacle, monstrance, pix, pyx), *ciborium* (*cuiboriuim* = ciborium), *panagerion* (*panageriuon* = enkolpion, pectoral holy image), *petohlebница* (*netohlebuica* = artoclasia, five-bread vessel, litarium), *sasud za toplotu* (*cacyd za toplotu* = zeon). For the keeping of those objects and preparation of the Eucharist served the Table of Preparation (credence)—*proskomide* (προσκομιδή) in the Greek Orthodox Church, and *pastophorium*, *secretarium*, *sacrarium* in Roman-Catholic. See B. Radojković, “Sasudi”, in *LSSV*, pp. 649–650.

27 Ed. Ralles and Potles, pp. 306–308; ed. Novaković, pp. 324–326.

28 The First Council of Constantinople (381), which is considered as the Second Ecumenical.

29 Ed. Ralles and Potles, p. 307; ed. Novaković, p. 325.

Two charters promulgated during the reign of King Stefan Uroš Milutin mention larceny from a church, but they do not use the term sacrilege (свештен'нотат'ство, *sveštenotatstvo*). The charter presented to the monastery of Saint Stephen in Banjska says: "And if someone stole something from a church, relics, wax or incense, let his house be scattered" (И аще к'то оукраде ч'то въноутрь црькве до свѣще, воска или тъмниана, да му се коуцта распе).³¹ It is striking that the penalty for larceny of any church object is the same (confiscation of property), whether it be a holy object or a thing of low value. The same charter testifies that confiscation of property was punishment for sacrilege. King Milutin says that he donated several villages to some persons as hereditary estates. "They shall hold their property as long as they are faithful to the Church, King and his successors and under condition that they do not commit a crime of sacrilege" (И села коѡа даа краливѣство ми ... догдѣ соу вѣр'ни црькви и краливѣствоу ми, и по м'не господѣствоуюцоумоу, и догдѣ се не вѣрѣтоу татиѣ црьков'нии, да соу имъ и ихъ дѣти по нихъ оу бациноу в'сегда).³² This clause shows that sacrilege was punishable in the same way as high treason. The Gračanitza charter equalizes larceny from a church and homicide: the penalty shall be what Lord the King says (А ѡловѣкъ кон краде црькъвъ и вражду оучини цю рече господинъ краљь).³³ So, sacrilege and *vražda* (homicide) are major crimes, both in the sphere of King's Court of Justice (*casus regales*).

Article 28 of the so-called "*Justinian's Law*", entitled "Law on larceny" (Ѡ краг'и. Закон), also speaks on sacrilege: "If someone has stolen something from a church, during the day or night, let him be blinded. If he has stolen something belonging to the church from the church yard, let him be beaten and singed and banished from that place" (Аще кто оукрадетъ что ѡт црькве, или въ ноци или въ дъне да се вслѣпитъ. Аще ли на дворѣ цю црьковно оукрадетъ, да се бѣе и всмюди и проженет ѡт тогди мѣста).³⁴

3 Robbery (ῥοπαγή, *latrocinium*, ροῦσα)

Robbery is defined as the wrongful taking and carrying away of the personal property of another from the other's person or personal custody and against the other's will by force and violence. The essence of the crime is the exertion of force against another to steal personal property from that person. A person

31 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

32 Ibid., p. 464.

33 Ibid., p. 503.

34 Ed. Marković, p. 60. Cf. *Ecloga* xvii, 15 and *Procheiron* xxxix, 58.

is guilty of robbery if, in the course of committing a theft, he a) inflicts serious bodily injury upon another; or b) threatens another with or purposely puts him in fear of immediate serious bodily injury.³⁵ Robbery usually carried out by members of lawless bands, often accompanied by class struggle and military operations, was called brigandage (ληστεία) and considered as a serious form of robbery.

Byzantine law does not explicitly mention robbery as a special crime. Only the *Procheiron* xxxix, 19 speaks on “famous” (i.e. professional) brigands (Οἱ ἐπίσημοι λησται, Нарочитіе разбойники), but it does not contain a definition of robbery.³⁶ Matheas Blastares introduced in his *Syntagma* rules on robbery in two places: Chapter A-12, entitled “On brigands who steal another’s” (Περὶ τῶν ἀρπαζόντων ληστρικῶς τὰ ἀλλότρια, О вьсхышταιюштихъ разбойнигыскы тоуж-даа),³⁷ and in the already quoted Chapter K-23 (“On larceny”), where at the end of the chapter there is a subtitle “Of brigands” (Περὶ ληστῶν, О разбойни-цѣхъ).³⁸

Chapter A-12 starts with, at considerable length, Rule 3 and the much shorter Rule 10 of Gregory Thaumaturgus. The essence of the rule is that brigands shall be removed and excommunicated from the Church of God, in the same way as sons are removed and deprived of their father’s fortune, because of their illegal acts (ἐκκήρυκτον καὶ ἀπόβλητον τῆς τοῦ Θεοῦ Ἐκκλησίας καθίστησιν, οἷα καὶ τοὺς δι’ αἰτίας ἀτόπους τῆς πατρικῆς οὐσίας ἐκβαλλομένους καὶ ἀποκηρυσσομένους υἱοὺς, отиѣтна и отврѣженна отъ Божіе црькве оустраиаетъ, іакоже ни же винъ ради безмѣстниихъ отъгьскаго богатѣства изгониимыихъ и отиѣтае-мыихъ сыновъ).³⁹ The six laws that follow were taken from the *Basilika* and *Procheiron*:

- “The one who plunders after a fire or shipwreck or in a demolished house, the law condemns to indemnify fourfold price within one year [after the beginning of investigation], and when one year is past he has to pay single value” (Ὁ δὲ νόμος, τὸν ἀπὸ ἐμπρησμοῦ ἀρπάζοντα, ἢ ναυαγίου, ἢ καταπεσοῦσης οἰκίας, εἴσω μὲν ἐνιαυτοῦ, εἰς τὸ τετραπλοῦν ἀποδοῦναι καταδικάζει, μετὰ δὲ τὸν ἐνιαυτὸν, εἰς τὸ ἀπλοῦν, Законъ же иже отъ палежа вьсхышцаюцаго, или истопленія, или падшаго дома вѣноуѣтъ оубо лѣта вѣ четворногоу отдати ооуждаетъ, по лѣтѣ же вѣ истовиноу).

35 Brown, *Legal Terminology*, p. 107; *Black's Law Dictionary*, p. 1329.

36 Ed. Zepos, vol. II, p. 218; ed. Dučić, p. 399; ed. Petrović, p. 322b. The law was accepted by Matheas Blastares' *Syntagma*, Chapter K-23.

37 Ed. Ralles and Potles, pp. 98–100; ed. Novaković, pp. 101–103.

38 Ed. Ralles and Potles, p. 334; ed. Novaković, p. 353.

39 Ed. Ralles and Potles, p. 98; ed. Novaković, pp. 101–102.

- “The same is valid for a person who receives [plundered objects] with fraudulent intent” (ὡσαύτως καὶ τὸν κατὰ δόλον ταῦτα ὑποδεχόμενον, ΤΑΚΟЖДЕ И НИЖЕ ПО ЛЬСТИ СІА ПОДІЕМЛЮШТАГО).
- “The law does not forgive robbers, even if they before a sentence return the plundered property; they shall be condemned to pay fourfold value” (Τοὺς δὲ ἄρπαγας, καὶ πρὸ καταδίκης προσάγοντας τὸ ὑπ’αὐτῶν ἄρπαγὲν, οὐ προσίεται, ἀλλ’ εἰς τὸ τετραπλάσιον καταδικάζει, ХЫШГ’НИКЫ И ПРѢЖДЕ ОСОУЖДЕНІА ПРИНОСЕШТИХЪ ОТЪ ТѢХЪ ВЪСХЫШТЕН’НОЕ НЕ ПРИЕМЛЯЕТЪ, НЪ ВЪ ЧЕТВОРИНОУ ОСОУЖДАЕТЪ).⁴⁰
- “If someone captures by force any movable thing (κινητὰ πράγματα, ДВИЖИМЫЕ ВЕШТИ), he has to pay fourfold value. If there were no witnesses, the looted person shall make a sworn statement and a robber has to compensate him a single value of the captured thing, according to a sworn statement.”⁴¹
- “If someone without a sentence seize by force any movable thing, even if he be its owner, he shall lose his ownership right over it; if a thing belongs to somebody else, he shall pay its value. If the investigation was initiated within one year, a fine shall be added, and after a year only a thing and fruits”⁴² (Ἐάν τις χωρὶς δικαστικῆς ἀποφάσεως ἀφέληται τι πρᾶγμα, εἰ μὲν δεσπότης ἐστὶ τοῦ πρᾶματος, ἐκπίπτει τῆς δεσποτείας αὐτοῦ· εἰ δὲ ἀλλότριόν ἐστι τὸ πρᾶγμα, καὶ τὴν τιμὴν αὐτοῦ δίδωσι. Κάνταῦθα τοίνυν, ἔσωθεν τοῦ ἐνιαυτοῦ κινουμένης τῆς ἀγωγῆς, δίδεται ἡ ποινὴ, μετὰ δὲ τὸν ἐνεαυτὸν, τὸ πρᾶγμα μόνον καὶ οἱ καρποί, АШТЕ КТО КРОМѢ СОУДНАГО СТРЕЧЕНІА ОТИМЕТЪ КОЮ ВЕШТЬ, АШТЕ ОУБО ВЛАДИКА КЕСТЬ ВЕШТИ, ОТПАДАЕТЪ ВЛАДЫЧЕСТВА ТОЕ; АШТЕ ЛИ ЖЕ ТОУЖДА КЕСТЬ ВЕШТЬ, И ЦѢНОУ КЕ ДАЕТЪ. И ЗДѢ ОУБО, ВЪНОУТРЬ ЛѢТА ПОДВИЗІАЮШТЕН СЕ ПРИ, ДАЕТЪ СЕ ГЛОБА, ПО ЛѢТѢ ЖЕ ВЕШТЬ ТЫК’МО И ПЛОДОВЕ).⁴³
- “The one who captures by force a land or rearranges the boundary stones, he shall pay double the value of the seized things” (Ὁ ἀρπάζων γῆν, ἢ μετατιθεὶς ὄρια, διπλὴν τὴν ἀρπαγὴν ἀποδίδωσιν, ВЪСХЫЩАЕНІИ ЗЕМЛЮ ИЛИ ПРѢБЛАГАЕ ПРѢДѢЛИ СОУГОУБО ЕЖЕ ВЪСХЫТИ ВЪЗДАВАЕТЪ).⁴⁴
- “Those who attack with weapons and destroy somebody else’s homes or lands shall be punished by the death penalty” (Οἱ μεθ’ ὅπλων ἐπιόντες, καὶ

⁴⁰ *Basilika*, LX, 20, 1.

⁴¹ *Basilika*, LX, 17, 314.

⁴² The law does not prescribe the amount of the fine. The final wording is not clear. I suppose that the intention is that a robber must pay the value of the captured thing plus the fruits and profits of the property.

⁴³ *Basilika*, LX, 3, 55.

⁴⁴ *Procheiron*, XXXIX, 48.

πορθοῦντες ἄλλοτρίους οἴκους ἢ ἀγροὺς, εἰς κεφαλὴν τιμωροῦνται, Иже съ оро-
ужїемъ нападающе и раззарающе тоуждеи домаы или села, въ главоу томиши
соутъ).⁴⁵

Although final lines of Chapter K-23 contain a subtitle “Of brigands”, only the first law, taken from the *Procheiron*, treats the crime of robbery: “Let the famous brigands be crucified⁴⁶ at the places where they have committed a crime, in order to frighten all those who could do something similar, and to give comfort to the relatives of killed persons” (Οἱ ἐπίσημοι λησται ἐν τοῖς τόποις, ἐν οἷς ἐπλημμέλησαν, ἀνασταυροῦνται, ἵνα διὰ τῆς θέας πτοηθῶσιν οἱ τοῖς τοιούτοις ἐγχειροῦντες, καὶ ἵνα γένηται παραμυθία τοῖς συγγενέσι τῶν ἀναιρεθέντων, Нарочити раззоришица на мѣстѣхъ идеже съгрѣшише да распиниашуть се, да отъ видѣнїа оубоетъ се иже сицевага нагнанаюшгѣи и да боудетъ оутѣшенїе съродникомъ оубиенїиныхъ).⁴⁷

The second law refers to cutting of trees, and it orders: “Those who are cutting trees or wine grape shall be punished as robbers” (Οἱ δένδρα καὶ μάλιστα ἀμπέλους τέμνοντες, ὡς λησται κολάζονται, Иже дрѣвеса и паѣ ложи съкоушгѣи ѡкоже раззоришица мочимїи соутъ). Does this mean that persons who cut trees and wine grapes would be crucified? This is hard to believe, because the second part of this provision says: “if more that one cut the same tree, everyone is guilty as he had cut alone the whole tree; if he denies, he has to pay double value, if he confesses, single value” (κὰν πολλοὶ τὸ αὐτὸ τέμωσι δέδρον, ἕκαστος αὐτῶν εἰς ὁλόκληρον ἐνέχεται, ἥτοι ἐξ ἀρνήσεως μὲν, τὸ διπλοῦν τοῦ τιμήματος· ἐξ ὁμολογίας δὲ, τὸ ἀπλοῦν, αἷτε и мнози тожде съкоутъ дрѣво, кѣждо ихъ въ цѣло повинїнь иетъ, рекѣше отѣрѣженїемъ оубо соугроубо цѣноу; исповѣданїемъ же еди-
ногоубо).⁴⁸

“If someone intentionally receives a stolen thing, he shall be an accessory after the fact and shall be punished in the same way as the perpetrator” (Ὁ ἐν εἰδήσει ὑποδεχόμενος τὸ κλαπέν πρᾶγμα, καὶ ὁ συνειδῶς τῷ ἁμαρτάνοντι, ἐν ἴσῳ αὐτῷ τιμωροῦνται, Иже въ вѣдѣнїи подемаи оукраденїоу вештї, и съвѣстїникъ боудетъ съгрѣшаштомоу, въ равѣно томоу томитъ се). It is clear that this provision refers to larceny, although Matheas Blastares placed it in the part of the chapter speaking on robbery.

45 *Basilika*, LX, 18, 3. *Syntagma*, ed. Ralles and Potles, p. 100; ed. Novaković, p. 103.

46 According to the *Ecloga* (xvii, 50) and *Basilika* (LX, 51), as a deterrent, brigands were to be brought to death by the *furca* (φοῦρκα, lit “fork”, an instrument of execution related to the gibbet) at the place where they were seized.

47 *Procheiron*, xxxix, 16.

48 *Basilika*, LX, 16, 2 and 6.

The first article in sequence treating robbery has already been mentioned: article 143,⁵² which provides responsibility for a Warden of the Marches (*vlastela krajišnici*) for raids of brigands. The most important are articles 145, 146 and 147. These three clauses go together and illustrate the extent of brigandage in the country at the time, as well as Dušan's resolution to stamp it out:

Article 145, entitled "Of brigands and thieves" (Џ ГОУСАРЬ И ТАТЪ):

My Majesty commands. In all lands and in the towns and counties and in the marches there shall be no brigands nor thieves in any region. And in this manner shall thieving and brigandage be stopped. In whatsoever village a thief or brigand be found, that village shall be scattered and the brigand shall be hanged forthwith, and a thief shall be blinded and the headman⁵³ of the village shall be brought before me and shall pay for all that the brigand or thief has done from the beginning and also shall be punished as a thief and a brigand.

Повелѣва царство ми, по вѣсѣхъ земляхъ и по градовѣхъ, и по жоупахъ, и по краицѣхъ гоусара и тата да нѣсть ни оу чѣмъ прѣдѣлѣ; и симъзи вѣразомъ да се оукрати татѣа и гоусарство; оу коемъ се селе нагѣ татъ или гоусар, този село да се распе, а гоусаръ да се вѣси стръмоглавъ, а татъ да се вѣлѣпи, а господарь села тога да се доведѣ свезанъ къ царствоу ми и да плакѣ вѣсе цю не чинилъ гоусаръ и татъ ѿт испрѣва, и пакы да се каже, како татъ и гоусаръ.⁵⁴

Article 146,⁵⁵ entitled "Of bailiffs" (Џ ВЛАДАЛ'ЦѢХЪ)⁵⁶:

52 See Chapter 9, section 4.5.

53 The word *gospodar*, translated as "headman", literally "lord", must not be taken in this context to mean more than a prominent yeoman in the village, having his own holding, and acting in the capacity of representing the village (Burr, "The Code of Stephan Dušan", p. 526, comment on article 145).

54 Burr, "The Code of Stephan Dušan", p. 526; Novaković, *Zakonik*, p. 112; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

55 In article 146 Dušan includes various administrative officials in the net, threatening them with the actual penalties of the criminals if they were caught harbouring them.

56 The word *vladalci*, translated "bailiffs", was a general name for all court dignitaries (see Chapter 9, section 2.2), but in article 146 it denotes an administrator of the village, appointed by his lord. In English law, a bailiff is a court officer or attendant who has charge of a court session in the matter of keeping order, custody of the jury, and custody of prisoners while in the court. One to whom some authority, care, guardianship, or jurisdiction is delivered, committed, or entrusted. One who is deputed or appointed to take charge of

And also prefects⁵⁷ and lieutenants⁵⁸ and bailiffs and reeves⁵⁹ and headmen⁶⁰ who administer villages and mountain hamlets. All these shall be punished in the manner written above, if any thief or brigand be found in them.

Такожде кнезовѣ и прѣмникюрѣ, и владал'ци, и прѣдстайници, и чел'ници кои се вбрѣтаю сели и катѣни, владающе, тызѣи вѣси да се кажѣ вбра-
зомъ выше писанымъ, аще се найдѣ оу нихъ татѣ или гоусарѣ).⁶¹

Article 147, entitled “Of bailiffs” (Ω владал'цѣх):

If any bailiff make a report to his master and that lord be inattentive thereto, he shall be punished as a brigand or a thief.

Ако ли сѣ владал'ци вповѣдали господарѣ; а господарѣ се понебѣдили, да се тазѣи господа кажѣ како гоусарѣ и татѣ.⁶²

To this group of articles we can also add article 173, entitled “Of lords” (Ω власт'влѣхъ), which orders: “Lords, greater and lesser, who come to my Imperial Court, whether Greek, German or Serb, whether great lord or anyone else, and

another's affairs; an overseer or superintendent; a keeper, protector, or gurdian; a steward (*Black's Law Dictionary*, p. 141).

57 The word *knezovi*, translated “prefects”, in article 146 designates superiors of villages or Vlachs' hamlets. Vlachs' prefects are mentioned by the Žiča chrysobull (А се Власи... Грьдѣ кынезѣ) and two of King Milutin's chrysobulls to the monastery of Hilandar from the years 1282 and 1303–1304 (А се Власи: кнезѣ Воихна). Mošin, Ćirković, and Sindik, *Zbornik*, pp. 91, 279 and 370. Besides that *Knez* was the title of Serbian monarchs from 1371 till 1402 (see Chapter 9, section 1).

58 The word *primicuri* or *primikiri* (from Greek *πριμικήριος*), translated “lieutenants”, is also one of the names for superiors of villages or Vlachs' hamlets. For example, the Saint Archangel's chrysobull mentions *premićur Voihna* (прѣмникюрѣ Воихна) and *Grade premićur* (Градѣ прѣмникюрѣ). Ed. Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, pp. 102 and 106.

59 The word *predstainici*, translated “reeves”, is also a name for superiors of villages and hamlets, mentioned only in article 146. A reeve is an ancient English officer of justice inferior in rank to an alderman. He was a ministerial officer appointed to execute process, keep the King's peace, and put laws into action (*Black's Law Dictionary*, p. 1280).

60 On *čelnici* (“headmen”), see Chapter 9, section 2.3.

61 Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 113; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

62 Burr, “The Code of Stephan Dušan”, p. 526; Novaković, *Zakonik*, p. 114; *Zakonik cara Stefana Dušana*, vol. III, p. 140.

bring with them a brigand or a thief, shall be themselves punished as a thief or a brigand" (Властѣле и властѣличикы кои гредѹ оу дворѣ царства ми, или грѣкъ, или нѣмьць, или сръбинь, или властѣлинъ, или инь кто любо, терѣ до вѣде собомъ гоусара или тата, да се ви'зи господарь каже како тать и гоусарь).⁶³ "As the lords who visited the Imperial Court were usually accompanied by a numerous retinue, probably including foreign and other mercenaries and armed retainers, it was a necessary precaution to hold them responsible for the misdeeds of their party."⁶⁴

All these quoted articles illustrate the extent of brigandage in Serbia at the time, as well as Dušan's intent to stop it with severe penalties and threats to his administrative officials who could help and harbour brigands. However, robbery was a common occurrence even a few centuries before Stefan Dušan's reign.⁶⁵ Already King Stefan the First Crowned, in the biography of his father Stefan Nemanja (Saint Simon), presented a story of a poor, lame man, "bruised by the evil brigands" (и оубиенаго раз'бойники злыми), who was cured thanks to the holy relics of Saint Simon.⁶⁶

The problem arised from the fact that robbery was not only the occupation of low social classes, but of noblemen as well. Theodore Metochites, for example, in his Ambassador's Report wrote:

Some between his [King Milutin's] fellow-countrymen are barbarians, brutes and ignorant persons, and some of them are shameless men, ill-tempered and scamps, accustomed to delight in fight; they are robbers of bovines and goats, they are neither householders nor men of reputation, but they lurk and plunder in the borders and in the waste mountains herds, men and travellers, disregarding nature, law, truth and any justice and this is common.

Οἱ μὲν τῶν ἐγγχωρίων αὐτῶν βάρβαροι καὶ σκαιοὶ καὶ ὀλιγογνώμονος· εἰσὶ δ' οἱ καὶ βδελυροὶ τε καὶ κακοήθεις καὶ κακογνώμονες, ταῖς μάχαις εἰθισμένοι χαίρειν, ταύρων ἢ δ' αὐγῶν ἀρπακτῆρες, οὐδ' εἰς προὔπτον οὐδ' ἐπίδημοὶ τινες οὐδ'

63 Burr, "The Code of Stephan Dušan", p. 533; Novaković, *Zakonik*, p. 135; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

64 Burr, "The Code of Stephan Dušan", p. 533, comment on article 173.

65 On brigandage in Serbia see M.A. Purković, "Krađe i razbojništva u srednjeevokovnim srpskim zemljama" ["Larcenies and Robberies in Mediaeval Serbian Lands"], *Glasnik jugoslovenskog profesorskog društva* 13 (1933), pp. 406–414, and K. Jireček, *Istorija Srba*, vol. II, pp. 285–288.

66 Ed. Jovanović, p. 78. It is interesting that the hagiographer uses for brigand the modern word *razbojnik*, not *gusar*, which is common in Dušan's Law Code.

ἐπίδηλοι, ἀλλ' ἐν τοῖς ὄροις τε καὶ ἐν ὄρεσιν ἐπ' ἐρημίας ἀνδρῶν τε ὁδίων καὶ
βοσκημάτων ἐλλοχῆται τε καὶ λωποδύται καὶ ἀνδραποδισταί, κατηλογηκότες
τῆς φύσεως καὶ δόγματος ἀληθείας καὶ δίκης ἀπάσης, ἥς νομίζεται.⁶⁷

The most famous brigand in the Balkans was Momchil (Bulgarian Момчил, Serbian Момчило/Момчило, Greek Μομιτζίλος or Μομιτζίλας, born c.1305, died 7 July 1345), a 14th-century Bulgarian robber and local ruler. Initially a member of a bandit gang in the borderlands of Bulgaria, Serbia and Byzantium, Momchil was recruited by the Byzantines as a mercenary. Through his opportunistic involvement in the Byzantine civil war of 1341–1347, where he played the various sides against each other, he became ruler in a large area in the Rhodopes and Western Thrace.⁶⁸ Due to his opposition to the Turks, Momchil is remembered in popular South Slavic legends as a fighter against the Turkish invasion of the Balkans.⁶⁹

67 Metochites, 325–332, ed. Mavromatis, *Fondation*, p. 98.

68 Momchil achieved initial successes against Turks and Byzantine alike, setting Turkish ships on fire and almost managing to kill one of his main opponents at the time, John VI Cantacouzenos. In late spring 1345, however, Cantacouzenos reinforced with allegedly 20,000 troops from Aydin under their ruler Umur Bey and marched against Momchil. The two armies met near Peritheorion (Περιθεώριον, today a small village Amaxades, Greek Αμαξάδες, Bulgarian Арабажди, Turkish Arabacıköy, with a population of 1,773, in the Rhodope regional unit, East Macedonia and Thrace, Greece; south of the village are the remains of the ancient town Anastasiopol, Greek Αναστασιούπολις, later known as Peritheor, Peritor, Bulgarian Бургорад) on 7 July 1345, and Momchil was defeated and killed. Information on Momchil is given by Byzantine writers Nikephoros Gregoras and John Cantacouzenos in their historical works, as well as in the Turkish epic chronicle *Düstürnâme*, written by poet and historian Enveri, during the reign of Sultan Mehmet II (1451–1481). Fragments of Gregoras and Cantacouzenos concerning Momchil were translated into Serbian with extensive comment by S. Ćirković and B. Ferjančić, in *VIINJ*, vol. VI, pp. 253–262, 452–458, 461–467, 472–477, 480. See also *Le Destän d'Umur Pacha (Düstürnâme-i Enveri)*, *texte, traduction et notes*, ed. I. Mélikoff-Sayar (Paris 1953).

69 There is a long history of treating robbers as heroes. Originally they were admired by many as bold men who confronted their victims face-to-face, ready to fight for what they wanted. The mediaeval outlaw Robin Hood is regarded as an English folk hero. Later robber heroes included the cavalier highwayman James Hind, the French-born gentleman Claude Du Vall, John Nevison, Dick Turpin, Sixteen String Jack, William Plunket and his partner the “Gentleman Highwayman” James MacLaine, the Slovak Juraj Jánošík, and Indians including Kayan Kulam, Kochunni, Veerapan and Plan Devi. In the same way, the Puerto Rican pirate Roberto Cofresi also came to be venerated as a hero.

In the European lands of the Ottoman Empire, the term *hajduk* (χαῖδουκ, χαῖντοῦκ) was used to describe bandits and brigands of the Balkans, while in Central Europe for the Slavs, it was used to refer to outlaws who protected Christians against provocative actions by the Ottomans. In Balkan folkloric tradition, the *hajduk* (*hajduci*, χαῖντοῦκοι, in plural) or *klepht* (κλέφτες, κλέφτις in plural) in Greece, is a romanticized hero figure who steals from, and

In mediaeval Germany there existed the term *Raubritter*, meaning robber baron or robber knight. A *Raubritter* was an unscrupulous feudal landowner who, protected by his fief's legal status, imposed high taxes and tolls out of keeping with the norm without authorisation by some higher authority. Some resorted to actual banditry.

Mediaeval robber barons most often imposed high or unauthorised tolls on rivers or roads passing through their territory. Some robbed merchants, land travellers, and river traffic, seizing money, cargo, or entire ships, or engaged in kidnapping for ransom.

It seems that the crime of robbery could be committed by the King himself. Such a conclusion could be made from Queen Helen's oath to the Archbishop, Doge and the whole Republic of Dubrovnik (1267–1268). The Queen swore to the friendship and promised to inform the City, as soon as possible, if her husband King Uroš raised an army against Dubrovnik, or had intent to rob it (И ако име хтѣти краљ послати воискѹ на Дѹбровникѹ, или гдѣѹ, или цю годѣ пакостити Дѹбровникѹ, да є ѡд мене вѣдѣние ѹ градѣ колико наивеке могѹ брьзо).⁷⁰

We already mentioned *gradobljudenje*, the villager's service of providing the guard in towns and on the roads and coasts in order to protect merchants and travellers from brigands and thieves. For example, King Stefan Dragutin in the chrysobull presented to the monastery of Hilandar (1276–1281) orders that villagers from Prizren's manor have to provide a guard to protect the Holy Mountain's sea ports and coasts from pirates (И призрѣньскѣ метохиѣ, како соустрѣгли стражу ѡд Грькѹ, да не стрѣгоу, нь за тоу стражу да даю оу Светоу Горуу чловѣка да стрѣжеть страже на моры на пристаныщити, нь что имѣ оуз'моу гоусомѣ ѡд Грькѹ).⁷¹ The guarding of roads was prescribed by articles 157, 158 and 160 of Dušan's Law Code, quoted above.

The above-quoted chrysobull of King Dragutin to Hilandar mentions the term *podvod* (аке не боудѣ подьвода на нѣ).⁷² According to Taranovski a *podvod*

leads his fighters into a battle against the Ottoman authorities. They are somewhat comparable to the English legend of Robin Hood and his merry men, who stole from the rich (which is in the case of *hajduci* to be also foreign occupants) and gave to the poor, while defying seemingly unjust laws and authority. The *hajduci* of the 17th, 18th, and 19th centuries were commonly regarded as both guerilla fighters against Ottoman rule and as bandits and highwaymen who preyed not only on Ottomans and their local representatives, but also on local merchants and travellers. As such, the term could also refer to any robber and carry a negative connotation.

70 Mošin, Ćirković, and Sindik, *Zbornik*, p. 238.

71 Ibid., p. 268.

72 Ibid., p. 268.

is a special type of accomplice related to robbery—aiding criminals by informing brigands on persons who should be robbed.⁷³

4 Rapine (*rapina*)

Rapine is defined as the forcible and violent taking of another man's movable property with the criminal intent to appropriate it to the robber's own use. As opposed to robbery, the essence of the crime does not imply the inflicting of serious bodily injury upon another or putting someone in fear of immediate serious bodily injury. Serbian mediaeval law has no strict definition of rapine, but according to King Vladislav's treaty with Dubrovnik (September 1234–April 1235), the difference between the two crimes is evident. Ragusan Doge Johannes Dandulus (ЖАНИ ДАНЬДОЛЬ) swore to the Serbian King “that he shall not inflict any damage to the King's country and city, neither by rapine, nor by robbery, neither openly, nor secretly” (ИЗЕМЬЛИ ТВОЕИ И ГРАДОМЪ ТВОИМЪ ДА НЕ ПАКОСТИМО НИ ПЛѢНОМЪ НИ ГЪСОВЪ, НИ УЧИНЕЪСТЬ НИ ТАЕМЪ).⁷⁴ As the source mentions rapine and robbery (*ni plenom ni gusom*) as two separate crimes,⁷⁵ it is clear that the difference existed, and that Serbian lawyers at least knew of it. For rapine our document uses the word *plen* (ПЛѢНЬ), meaning prey, booty, spoils, plunder, loot. The substantive *plen* comes from the verb *pleniti*, which has also several different meanings (to rob, plunder, pillage, sack, loot, ravage, maraud), but it always refers to the violent and unlawful taking of another man's property (articles 57, 142 and 143 of the Code).

Another term for rapine is *grabljenije* (ГРАБЛЕНІЕ),⁷⁶ present in article 144 of the Code.⁷⁷ However, to denote rapine Serbian legal sources sometimes use the descriptive formula “taken by force” (СИЛОМЪ ОУЗЕТО). For example, King Dragutin's chrysobull to the monastery of Hilandar (1276–1281), among other things, says: “If someone be found on the market-place taking something big or small by force, he has to return tenfold” (И НА СЕМЪ ТРЪГОВУ КТО СЕ УВРЪТЕ ОУЗЕМЪ ПО СИЛѢ ЧЕГО МАЛО И ВЕЛИКО, ДА ВРАТИ САМОДЕСЕТО).⁷⁸ Article 180 of Dušan's Law Code starts with the wording: “If anyone find anything robbed or stolen

73 Taranovski, *Istorija*, vol. II, p. 98.

74 Mošin, Ćirković, and Sindik, *Zbornik*, p. 135. The Latin text of the document is a little bit different: *Et terre vestre et civitatibus vestris non offendemus, nec manifeste nec occulte*. Ibid.

75 But only in the Serbian version of the document.

76 *Grabež* (грабеж) in modern Serbian.

77 See Chapter 21, section 3.

78 Mošin, Ćirković, and Sindik, *Zbornik*, p. 269.

or taken by force” (Аще кто цю оухватити гоушено, или крадено лицемь, или силомь оузето).⁷⁹ By opposing “taken by force” (i.e. rapine) with “stolen” (larceny) and “robbed” (robbery), the editors of the Code demonstrated that they were well aware of the tripartite division of essential crimes against property that was common in mediaeval law—*furtum*, *latrocinium*, and *rapina*. It is logical to think that the penalty for rapine was more strict than for larceny, but it is impossible to say anything more precise. In some cases the sources mention rapine, but without quoting a penalty. In articles 57 and 144, a penalty was presented, but it is not clear whether such a punishment was prescribed because of rapine or because of malfeasance of maintenance right (article 57) or villager’s reprisal (article 144).

5 Arson (ἐμπρησμός, палежь, запаленіе)

Arson is the wilful and malicious burning of a dwelling house or any other property. A person is guilty of arson if he starts a fire with a purpose of destroying a building or damaging any property, whether his own or another’s.

In Old Slavonic law malicious arson was considered as a felony of the first degree. So-called *Russkaya Pravda* (“Russian Justice, Vast Version”) set apart from a list of fines three crimes, robbery (разбои), horse-theft (коневыи тать) and arson (аже зажъжетъ), that were punishable by complete scattering (потокъ и разграбленіе).⁸⁰ Article 7 of the Pskov Judicial Charter (Псковская судная грамота), issued in various redactions between 1397 and 1467, prescribes that arson, high treason, sacrilege and horse-theft are four crimes punishable by death (А кримскому татю и коневому и переветнику и зажигалнику тем живота не дати).⁸¹

Byzantine law threatens capital punishment for malicious arson, as is evident from Chapter XVII, 41 of the *Ecloga*: “Whosoever by reason of hostility or rapine starts a fire in the city, let him be burnt. If he knowingly out of the town set on fire a village or field or house in the country, let him be punished by sword” (Οἱ διὰ τινος ἔχθρας ἢ ἀρπαγᾶς πραγμάτων ἐμπρησμον ἐν πόλει ποιοῦντες πυρὶ παραδιδόσθωσαν· εἰ δὲ ἔξω πόλεως χωρία ἢ ἀγροὺς ἢ οἰκίας ἀγρῶν ἐξεπίτηδες ἐμπρήσωσι, ξίγῃ τιμωρεῖσθωσαν).⁸² There is a similar provision in the *Procheiron*

79 Burr, “The Code of Stephan Dušan”, p. 534; Novaković, *Zakonik*, p. 139; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

80 Articles 7, 35 and 83. Ed. Zimin, *Sources of Russian Law*, vol. I, pp. 109, 111, 117.

81 Ed. Zimin, *Sources of Russian Law*, vol. II, p. 278.

82 Ed. Burgman, p. 240.

xxxix, 75–76.⁸³ Matheas Blastares created a separate Chapter E-7, entitled “On arson” (Περὶ ἐμπρησμοῦ, Ο παλεжи, in Prizren transcript Ο запалиєни), consisting only of secular laws.⁸⁴ Provisions were taken from the *Ecloga* xvii, 41, *Procheiron* xxxix, 18, 75, 76 and *Basilika* lx, 20, 2:

- If someone sets a house or wheat-stack on fire intentionally (ἐν εἰδήσει, въ вѣдѣнни), he shall be first whipped and than burnt. If the arson happened from recklessness (κατὰ ραθυμίαν, по невѣрѣженни), he shall be condemned for indifference and negligence. The penalty was not strictly provided. If the arson happened accidentally (κατὰ τύχην, по прилучаю), he shall be pardoned.
- “If someone, when a fire broke out, demolishes his neighbour’s house to save his own, [lex] Aquilia⁸⁵ shall not be enforced, that is no compensation of damage, unless that fire was next to his house, or it was already extinguished” (Εἴ τις ἐμπρησμοῦ γενομένου, διὰ τὸ σῶσαι τὸν ἴδιον οἶκον, καταστρέψει τὸν τοῦ γείτονος, ἀργεὶ ὁ Ἀκουῖλιος, ἥτοι ἡ ζημία, εἴτε τὸ πῦρ ἔφθασεν, εἴτε προεσβέσθη, Ἀπште кτο запалиєнио выв’шоу за еже съхранити свои домъ, раззоритъ соусѣд’нии, праждаюгьєтъ Акуγ’їліє, рек’ше тыштєта любо огнь достиже любо прѣдоугашєнь бытъ).⁸⁶

The Serbian legal sources use different terms for arson: *palež*, палежъ (*Syntagma*); *požeg*, пожегъ (article 58);⁸⁷ and *zapaljenje*, запалиєниє (*Syntagma* in Prizren transcript and article 99, manuscripts of Athos and Bistritza). All these

83 Ed. Zepos, vol. II, p. 226.

84 Ed. Ralles and Potles, pp. 250–251; ed. Novaković, p. 262.

85 *Lex Aquilia* (The Aquilian Law) was a celebrated law passed on the proposition of the Tribune of the Plebs, Caius Aquilius Gallus, 287 BC, during the course of the struggle between the plebeians and the patricians, superseding the earlier portions of the Twelve Tables, and regulating the compensation to be made for that kind of damage called *damnum iniuria datum* (wrongful damage to property), in the cases of killing or wounding of a slave or beast or another. According to Chapter III of the Law, a person who damaged property, other than by killing a slave or a four-footed animal (as in Chapter I), by breaking, burning or destroying, was liable to the owner in damages based on the highest value the damaged property possessed during the preceding 30 days. Liability under the *Lex Aquilia* was incurred when there was an intentional or negligent act which was wrongful, and which resulted in damage being suffered by the owner of the property which had been injured. According to Ulpian (D. ix, 2, 44), *In lege Aquilia et levissima culpa venit* (“Under the Aquilian Law even the slightest degree of faults counts”).

86 Ed. Ralles and Potles, p. 251; ed. Novaković, p. 262. Cf. Chapter 18, section 6.

87 In modern Serbian there exists the word *požar* (пожар), meaning “fire” or more frequently “conflagration”, a large and destructive fire. The English word fire is usually translated as *vatra* (вѣтра). The term *požar* is related to *Požarevac* (Пожаревац), lit. “Fire-town”, a city and the administrative centre of the Braničevo District in eastern Serbia, with a population of 44,183 inhabitants.

words are now obsolete, but some have survived in toponyms.⁸⁸ The modern word is *paljevina* (пaлeвинa).

Charters do not mention arson, but Dušan's Law Code contains two articles referring to it:

- Article 99, entitled “On those who burn houses” (ѿ впоалляюци коуѣкы):⁸⁹ “If anyone be found who has burnt a house, or a threshing floor, or straw or hay, let the village give up the burner: and if it do not give him up, then let that village pay what the burner would have suffered and paid” (Кѣо ли се наиде оужежъ кокы, или гоуѣмно, или сламѣ, или сено, да тоѣи село даа пожеж'цѣ; ако ли га не дастъ, да платѣи вноѣи село цю би пожеж'ца патилъ и платил').⁹⁰
- Article 100, entitled “On those who burn a threshing-floor” (ѿ гоуѣмна оужи-зюѣкы): “And if anyone outside a village burn a threshing-floor or hay, let the neighbourhood pay or hand over the burner” (Ако ли кѣо оужеже из'вѣнь села гѣмно или сено, да плати вколина волю да да пожеж'цѣ).⁹¹

These two clauses go together, and they insist once more on the principle of collective liability, the village in the first instance, the neighbourhood in the second.⁹²

Nothing is said about punishment in the older manuscripts, but those of the Athos and Bistritza group specify that a perpetrator of arson done “by rancour” (по пизмѣ) shall be burned alive if found, and if he cannot be found, the village would pay what he would have suffered and paid.⁹³ This provision is in close connection with Matheas Blastares' *Syntagma*.⁹⁴

88 During Turkish rule, the city of Obrenovac (today a municipality of the city of Belgrade) was called *Palež*, possibly as a reference to the frequent looting and fires it was subjected to. Today, *Palež* is a name of villages in the municipalities of Višegrad, Srebrenica and Kiseljak (Bosnia and Herzegovina) and Žabljak (Montenegro). *Požeg* has survived in the names of two towns called *Požega* (Пожега)—one in Serbia and another in Croatia. During the Socialist Federative Republic of Yugoslavia, Serbian *Požega* was called *Užička Požega*, to be distinguished from *Slavonska Požega*, now in Croatia. Serbian *Požega* is a town and municipality in Zlatibor District of western Serbia (population 13,153). Croatian *Požega* is situated in western Slavonia, eastern Croatia (population 26,248).

89 Burr, “The Code of Stephan Dušan”, p. 217, translated the titles of articles 99 and 100 as “Of Arson”, which is not precise.

90 Burr, “The Code of Stephan Dušan”, p. 217; Novaković, *Zakonik*, p. 76; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

91 Burr, “The Code of Stephan Dušan”, p. 217; Novaković, *Zakonik*, p. 77; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

92 See Chapter 17, section 1.

93 Novaković, *Zakonik*, pp. 76–77; *Zakonik cara Stefana Dušana*, vol. I, p. 186 (article 98), vol. II, p. 194 (article 97).

94 See B. Marković, “Krivično delo paljevine u zakonodavstvu cara Stefana Dušana prema

Severe penalties for arson were prescribed by the statutes of Adriatic towns, as well. The Statute of the city and island of Korčula in Chapter 49, entitled “On arson of another’s home” (*De comburentibus alienam domum*), provides that in a case of malicious arson of a house, of a threshing-floor or hay, confirmed by two trustworthy witnesses, a perpetrator’s right hand would be cut off and he would have to compensate the damage. If the burner was not found, the villagers from that village had to pay for the damage (*Item statuimus, quod si quis derobaverit, vel combuserit alienam domum, mandram, copam, vel metam bladi ex aliquo dolo, vel iniquo modo et probatum fuerit per duas testes fide dignos, tali malefactori amputetur manus dextera et emendet dampnum domino domus, mete, vel mandre. Et si talis malefactor non reperiretur, illi de illo casale emendet dictum dampnum*).⁹⁵

The Statute of Dubrovnik, Book VIII, Chapter 35, entitled “On huts’ arsons—how the damage must be repaired and compensated” (*De combustionibus capannarum qualiter debeant emendari et solvi*), orders: “If any hut in Dubrovnik’s district should be burnt ... and the criminals who set the fire could not be found, a damage ... shall be compensated by the people from that region” (*Si capanna aliqua fuerit combusta per districtum Ragusii ... et malefactores qui ignem posuerint sciri non poterunt ... statuimus quod dampnum ... emendari debeat per homines illius contrate*).⁹⁶

6 Brawl (So-called “Potka”, ПОТКА)

King Milutin’s chrysobull issued to the monastery of Saint George near Skoplje and two articles of Dušan’s Law Code (77 and 82) mention a common crime against agrarian property called *potka* (ПОТКА). The meaning of the word is not clear, but it seems that Đuro Daničić gave the right interpretation, saying that *potka* is “violation of boundaries and a fine for that” (*violatio finium atque ejusque pretium*).⁹⁷ According to Teodor Taranovski and Alexander Solovjev, in legal documents *potka* has three different meanings. Originally it was a mark installed on a boundary, for example, a signed bough placed on the meadow in order to show where the limits are.⁹⁸ Bulgarian scholar Stefan Bobčev (Cre-

rukopisima starije redakcije” [“Crime of Arson in the Legislation of Tsar Stefan Dušan According to the Oldest Manuscripts”], *IC* 60 (2011), pp. 139–151.

95 Ed. Hanel, p. 49.

96 *Statut grada Dubrovnika*, p. 436.

97 Daničić, *Rječnik iz književnih starina*, vol. II, p. 398. Cf. Mažuranić, *Prinosi*, p. 1051 (*potka*).

98 Such an interpretation was given by Vuk Karažić. He translated the Serbian word *potka*

фанъ Бобчевъ) wrote that the twentieth-century peasants in the neighbourhood of Sofia said: “They went to place *potka* on the meadows, i.e. to fix the limits” (“отишли да си турят потка на ливадеѣ, т. е. да ги разграничат”).⁹⁹ The second meaning is a violation of a boundary’s mark and any other crime against agrarian property. The third meaning denotes a fine for such a violation.¹⁰⁰ Saint George’s chrysobull on several places¹⁰¹ and Saint Stephen’s charter once¹⁰² mention *potka* as one of the fines payable to the monastery.

As *potka* was a common name for several crimes against agrarian property, the question was what type of crimes were considered as *potka*. The most complete listing of agrarian property’s violations, called *potka*, is exposed by a chrysobull of Bulgarian Tsar Constantine Tikh Asen (Bulgarian *Константин Тихъ Асен*, 1257–1277), presented c.1258 to the same monastery of Saint George near Skoplje, saying:

If anyone enters on the manor of Saint George, in any village without asking the archimandrite, either on mountains, or on pastures, or on enclosures, or on fishing and hunting-grounds, or if he cuts trees and clears a forest on the church hill, or if he installs a water-mill on church water, or grazes horses on church land, or leads water from church land, or ploughs a field without the hegoumenos’ benediction ... let him pay 6 perpers to the Tsar.

Аще кто вълезѣ на метохіе Свѣтаго Гевургина ѿ коемъ либо селѣ, безъ архимандритова въпрошенія, или въ планинои, или пашинца, или въ забѣлѣ, или въ ловица роена или звѣрна, или лѣсъ и дрѣво ѿсѣщи въ црьковномъ брѣдѣ, или водѣницѣ поставити на црьковнои водѣ, коѣ течѣ въ црьковна извода, или коней пастн на црьковнои земли, или родѣ поведе прѣзъ црьковнѣхъ земинѣхъ, или нивѣхъ поврѣвъ безъ игѣменова благословенія ... и да сѣ продастѣ въ дѣмосинѣ .S. пер’пер.¹⁰³

with the German terms *der Eintrag* and *Einschlag* and Latin *subtemen*. *Srpski rječnik*, p. 553.

99 S.S. Bobčev, “Starovremenska i segašna potka” [“Ancient and Modern Potka”], *Yuridičeski pregled* 26.1 (1925), pp. 3–11. Cf. M. Barjaktarević, “Potka Dušanova zakonika i našega doba” [“Potka in Dušan’s Law Code and in Our Epoch”], *Zbornik Etnografskog muzeja u Beogradu* (1951), pp. 232–233.

100 Taranovski, *Istorija*, vol. II, p. 101; Solovjev, *Zakonik cara Stefana Dušana*, p. 238.

101 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 317, 324, 326.

102 Ibid., p. 465.

103 Ibid., p. 257.

The charter does not use the word *potka*, but a few lines above we find the term *потѣжиже*, which allows to conclude that the quoted violations of agrarian property were considered as *potka*.

King Milutin's chrysobull to Saint George's monastery, which was based on a great number of previous monarchs' charters, mentions several cases which were all treated as *potka*: 1) if someone leads water from church land, he has to pay *potka* in the amount of 12 perpers to the *sebastos* (И възбраніаѣи водѣтеци на црковноу землю, идеже естъ и вѣт испрѣва текла законнаѣа вода, да плати потку севастоу .Вл. перьперь);¹⁰⁴ 2) whosoever unlawfully alienates a fief (*pronoia*) must pay 12 perpers as *potka* (И оу Рѣчисах' ексоприка да нѣсть, ни да се прода нива ни виноград ... Кто ли се въреце оу Рѣчисах' ексоприкасаѣи или продаѣи нивоу или виноград ... да плакиа поткоу цркви .Вл. перьперь).¹⁰⁵ The same fine of 12 perpers was provided in the same chrysobull for three more violations of agrarian property, which were not explicitly called *potka*, but they could be considered as *potka* in wider terms:¹⁰⁶ 1) whosoever without the hegoumenos' benediction ploughs a field or a garden or installs a threshing-floor on church land has to pay 12 perpers (Ако ли безъ игоумнова благословіеніа нивоу повре или врьтоуѣни на црковнои земли да плати оу цариноу .Вл. перьперь ... Такожде и за гоумна запрѣцаѣмь: такожде глоба .Вл. перьперь); 2) if someone without the hegoumenos' benediction leads water from a church "head", he must pay 12 perpers (Ако ли безъ игоумнова благословіеніа поведе кто вѣт црковне главе водоу да плати .Вл. перьперь оу цариноу); 3) if someone without the hegoumenos' benediction cuts anything (in the church forest), he must pay 12 perpers (Ако ли безоу игоумнова благословіеніа сѣче цю любо да плати .Вл. перьперь оу цариноу).¹⁰⁷

Article 77 of Dušan's Law Code treats *potka* as a brawl—a clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace: "A brawl between villages, 50 perpers; but between Vlachs and Albanians, 100 perpers. Of the fine, one half to the Tsar and one half to the owner of the village" (Пот'ка мегю сел'ми, ѿ. перьперь, а влахомь, и ар'банасомь, ѿ. перьперь, и тезіи пот'ке царѣ половина, а господароу половина чіе боудѣ село).¹⁰⁸ The Code does not speak on what would have been the reason for a brawl between villages, but there is no doubt that quarrels occurred due to boundary disputes.

¹⁰⁴ Ibid., p. 322.

¹⁰⁵ Ibid., p. 324.

¹⁰⁶ Taranovski, *Istorija*, vol. II, p. 102.

¹⁰⁷ Mošin, Ćirković, and Sindik, *Zbornik*, p. 327.

¹⁰⁸ Burr, "The Code of Stephan Dušan", pp. 212–213; Novaković, *Zakonik*, p. 62; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

Potka was also mentioned in article 82, already quoted (see Chapter 5, section 2.1), as a fine for the grass that herdsmen (Vlachs and Albanians) had consumed (ДА ПЛАТИ ПОТ'КЪ, и цю ѥ испасълъ). The spring and autumn migrations to and from mountain pastures were the occasions of much movement of Vlach and Albanian shepherds, with their families and flocks. Serbian lords and peasants were concerned that they and their pastures should not suffer from these activities.

7 Straying (*Popaša*, Попаша)

In mediaeval Serbia the most important violation of agrarian property was straying (so-called *popaša*)—a case when any man's cattle, permitted by its owner, trespass on another's pasture and graze. Monastery charters very frequently mention somebody else's herds trespassing and eating growing grass on pastures belonging to the Church. In Saint George's chrysobull we can read: "If anyone tresspasses with his cattle on church pastures without the hegoumenos' benediction, let him pay on duty 100 perpers, and one third of that fine to the church. And if a measure of church livestock perishes that winter, let those who have grazed off church pastures pay for this straying" (Ако ли кто оулаѣзе оу црѣковна пашица безъ игоумнова благословлєнїна с конимъ люво добит'комъ да плати оу цариноу .Р. перьперъ, а ѡт тѣх' глобъ црѣкви третїе. И цю помре црѣкви добитка, тои зимѣ да все платє тїзи кон боудоу попасли пашица црѣковна).¹⁰⁹ The Dečani chrysobull provides that if someone is grazing his herds all the time on the monastery's mountains, without giving rates to the monastery, "he has to give to the King 500 rams" (к'то ли забрани и не дастъ да плати кралеѣв'ствоующюумоу .є. сътъ ѡввѣнь).¹¹⁰

Interesting information on straying can also be found in Tsar Dušan's chrysobull concerning the manor of Saint Peter Koriški (17 May 1355):

And on the mountain of Saint Peter, as it was written in the old chrysobull ... let there be no forcible straying by any lord, great or small, neither by Vlach nor by Albanian. And whosoever be found, great or small, grazing by force, every kephale of the City of Prizren or lord of the land shall take from them 300 rams. There shall be neither judgment nor trial, as it was written in the chrysobull of the Sainted King,¹¹¹ nor my

109 Mošin, Ćirković, and Sindik, *Zbornik*, p. 327.

110 Edited by Ivić and Grković, p. 128.

111 King Milutin.

imperial writs, as My Majesty tried to Albanians, and Povika Radoslav¹¹² pronounced a sentence.

И планина светого Петра цю пише хрисовоуль стари ... да ихъ не пасе поси-
лиемъ ники властелинъ малъ ни великъ, ни влахъ, ни арбанасинъ. Кто ли
се нагѣ малъ и великъ и има пасти силомъ vsаки настоѣци кепалина града
Призрѣна или господаръ земльски да оузме на нихъ .т. овень. Ни соуда
ни прѣ, како пише хрисовоуль светого крала и книга соудовна царства
ми, како имъ је соудило царство ми са Арбанаси, и оузель на нихъ Повика
Радославъ потькоу.¹¹³

Analysis of the cited fragment reveals that the crime of straying could be committed not only by a haughty nobleman and his company, but by nomadic herdsmen as well. The Tsar ordered that there would be no trial because a precedent¹¹⁴ already existed—a decision pronounced by Radoslav Povika, *kephale* of Prizren. For penalty, mentioned in the text, the chrysobull uses the term *potka*, obviously because *popaša* (straying) was considered as the most common violation of agrarian property and treated as a type of *potka* in a larger sense. All further rulings were to be passed on the basis of principles established in prior cases.

For forcible straying, Tsar Dušan's chrysobull presented to the monastery of Saint Nicholas in Dobrušta prescribed an alternative, allowing a choice between a penalty in money of 500 perpers and a pecuniary penalty of 500 rams (Кто лї начне сїлѡмъ пасты, да плати господароу настоѣцимоу петъ сътъ перперъ или петъ сотъ овеновъ).¹¹⁵

However, Tsar Dušan's charter to the monastery of Saint Archangels in Lesnovo (1347–1350) shows that strict rules on forcible straying were not always applied: "All mountains and pastures and winter-shelters shall belong to the church of Saint Archangels. If someone starts grazing or spending the winter in shelters by force, let him give grass-tribute, according to the law" (И цю кѣтъ планина црѣковна и Пашиница и зимовишта, всѣмъ тѣмъ да обладаѣ црѣквѣ

112 Radoslav Povika was *kephale* in Prizren, brother of Great Logothet Đurde and headman (*čelnik*) Miloš. After Dušan's death he lived in Serres, and in 1365 he executed a duty of *kephale* and great headman of the Empress Helen, Dušan's widow. He was her man of confidence.

113 Edited by S. Mišić, *SSA* 11 (2012), p. 74.

114 An adjudged case or decision of a court, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law.

115 Edited by S. Mišić, *SSA* 15 (2016), p. 133. We have already noted that the editor thinks that the chrysobull was a forgery, done in the monastery of Hilandar, c.1365.

Светаго Архаггела. Ацѣ ли кто начнеть по силѣ пасти или зимовати, да дае травниноу црькви по законуу).¹¹⁶ So, in that case a penalty for forcible straying did not exist. A perpetrator only had an obligation to give grass-tribute, so-called *travnina*—a regular indemnity of using church pastures. It is very difficult to explain such an exception.

Dušan's Law Code mentions straying only in article 76, entitled "Of straying" (Ѡ попашѣ): "As to straying. If any man's cattle trespass on corn, or a vineyard, or a meadow recklessly, then let him pay for this straying what the valuers¹¹⁷ assess. But if he trespass knowingly, let him pay for the straying and six oxen" (За попашѣ. Ако кто попасе жито или виноградъ, или ливадѣ грѣхѣмъ; тозѣи попашѣ тоузѣи попаш, да платѣи цю рекѣ доушевніци кои цѣне; ако ли нахвалницѣмъ попасе, да плати попашѣ и .S. воловь).¹¹⁸ The Code marks a difference between straying committed recklessly and intentionally.¹¹⁹ In the first case there exists liability for damage: what the valuers assess. Valuers (*duševnici*, доушевніци) could be a type of primitive expert witnesses—persons who by reason of education or specialized experience possess superior knowledge respecting a subject about which persons having no particular training are incapable of forming an accurate opinion or deducing correct conclusions. Intentional straying is a criminal trespass (when a person without effective consent enters onto the property of another), and beside indemnity a perpetrator has to pay a fine of six oxen. An archaic pecuniary penalty in cattle testifies that this provision originated from the old customary law.

¹¹⁶ Novaković, *Zakonski spomenici*, p. 681, para. xxvi.

¹¹⁷ The word translated as "valuers" is *duševnici* (душевніци), meaning persons who estimated value by conviction, on their soul (Serbian *duša*, душа). Later on, in Montenegro, they were called *stimaduri* (стимадури), from Italian *stimatore* (Mažuranić, *Prinosi*, p. 288; Solovjev, *Zakonik cara Stefana Dušana*, p. 238).

¹¹⁸ Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 61; *Zakonik cara Stefana Dušana*, vol. II, p. 246; vol. III, p. 120.

¹¹⁹ See Chapter 17, section 3.

PART 6

Court System and Trial Procedure



Court System and Jurisdiction

A court is a body of government organized to administer justice. A unified court system did not exist in mediaeval Serbia. As in other feudal societies, the status of persons determined their legal rights, and this was also reflected in the existence of several types of court. The basic courts were feudal courts, where a lord had the right to hold a court for his tenants (“court-baron” in English law). The ecclesiastical courts (“Court Christian” in English law) administered justice to the clergy, as well as to laymen in some legal cases that were under the jurisdiction of the Church. The inhabitants of maritime towns and cities conquered from Byzantium were under the jurisdiction of their city courts. Foreigners living in Serbia had their own courts, and for trials between Serbs and Ragusans, justice were administered by a special mixed court, called *stanak* (*stanicum*). Finally, Dušan’s Law Code established the Imperial Court of Justice.

1 Feudal Courts

The manor was originally a tract of land granted out by the sovereign to a lord or to the Church or monastery, in fee or in hereditary estate. In English law it was otherwise called a “barony” or “lordship”, and appendant to it was the right to hold a court, called “court-baron”. The information we have from Serbian legal sources mostly mentions feudal courts that existed on manors (estates) that were the property of monasteries. We can suppose that temporal lords also had the privilege to administer justice to their serfs, but the data presented by the Serbian legal documents are rare and indirect.

1.1 *Feudal Courts on Monastic Estates*

Among the immunities that Serbian monasteries had, a very important right was that of holding a court and administering justice to all commoners living on monastic estates. Serbian legal documents clearly testify that only church authorities could try their villagers. That order was already expressed in Chapter 12 of Saint Sabba’s *Typicon* of the monastery of Hilandar, entitled “On the freedom of the monastery” (О СВОБОДНОУ БЫТИ МОНАСТЫРЪ):

So, I order to all of you from Lord God Pantokrator that this holy monastery must be free from all authorities, and from protos and from other

monasteries, and from any other bishops and that is not subjected to any law, either imperial, or ecclesiastical, or any other, except under the only celebrated in song Mother of God Teacher, and by prayer of our most blessed and holy father, monastery hegoumenos. And it must be kept, and administred, and led, and governed.

ЗАПОВѢДАЮ ОУБО ВСѢМЪ ВАМЪ. УТѢ ГОСПОДА БОГА ВСЕДРЪЖИТЕЛІА. СВОБОДНОУ БЫТИ СВЕТОМОУ СЕМОУ МОНАСТЫРОУ, УТѢ ВСѢХЪ ТОУ ВЛАДЫКЪ И УТѢ ПРОТА И УТѢ ИНЫХЪ МОНАСТЫРЬ И УТѢ ОСОБНЫХЪ ВЛАДЫКЪ И НИ ПОДЪ КЫМИ ЖЕ ДА ЕСТЬ ПРАВЪДАМИ НИ ЦАРЬСКЫМИ, НИ ЦРЬКОВНЫМИ НИ ИНЫМЪ НИКЫМЪ РЕ. НЪ ПОДЪ ЕДИНОЮ ПРѢПѢТОЮ БОГОРОДИЦЕЮ НАСТАВНИЦЕЮ И ПРѢБЛАЖЕНАГО И СВЕТАГО УТѢЦА НАШЕГО МОЛИТВОЮ ИГОУМЕНΟΥЮЩАГО ВЪ НИЕМЪ. СЪБЛЮДАТИ ЖЕ И ИСПРАВЛЯТИ И КРЪМИТИ И УБѢВЛАДАТИ.¹

It is clear that the monastery was excepted from all authorities, temporal and spiritual, and that power was exercised strictly by the hegoumenos. The right to hold a court was not explicitly mentioned, but it was surely understood, because it belonged to “all divine liberties” (Ѹ всакои божьствѣнии свободѣ)² that the monastery enjoyed.

More precise is King Stefan Uroš's charter to the Holy Virgin monastery in Ston (c.1252). “The church shall enjoy all liberties and shall be exempted from all authorities (Си же храмъ Светыиѣ Богородице въ всакои свободѣ да боудѣт ... утѢ ВСѢХЪ ВЛАДОУЩИХЪ) and the administration of justice for all trials among monastery's villagers and their trials with a people living outside of the monastery shall be done by the hegoumenos (На господствоующаго прѣбложихомъ властѣ и всако исправление еже в вьноутрьнихъ и вьнѣшнихъ правдахъ).”³

King Stefan Dragutin's charter presented to the monastery of Hilandar (1276–1281) orders:

In the case of villagers belonging to this Holy Church, who have actions among themselves, they shall be tried before the hegoumenos and church dignitaries except [for pleas] touching high treason, enticing man, land and murder. And a civil court shall be before the King or one of the King's servants, requested by the hegoumenos and monks of a monastery.

1 *Sveti Sava, Sabrana dela*, ed. Jovanović, p. 64. Cf. Chapter 12 of the Studenitza monastery *Typicon*, ed. Jovanović, p. 136.

2 Charter of Archbishop Sabba I (Saint Sabba) presented to the monastery of Saint Nicholas on Vranjina. Mošin, Ćirković, and Sindik, *Zbornik*, p. 127.

3 Mošin, Ćirković, and Sindik, *Zbornik*, p. 197.

И люде сие светіе цркви, пре које имаю мегоу собомъ, да се проу прѣд игоуменомъ или прѣд владальцы црковными развѣ невѣре и провода земље и вражде. А съ землианы соудъ да и естъ прѣд кралемъ или прѣд единѣмъ вѣ владальць двора кралева коѣга испроси игоумень и братына.⁴

The quoted provision reveals that feudal courts had jurisdiction over all trials among church villagers, except over crimes of high treason, murder or helping a villager to flee from his lord to another land, and over all litigations concerning the land, what was in the competence of the King's Court. All trials that church villagers had with other laymen belonged also to the jurisdiction of the King's Court. So, King Dragutin's charter drew a line between pleas which were in the sphere of the King's Court (so-called "pleas of the crown") and cases in the jurisdiction of the feudal court. Further charters had to accept such a differentiation of jurisdiction. The only exception is King Milutin's charter to Saint George's monastery, which does not mention reservation of jurisdiction belonging to the King's Court. The charter clearly orders:

Nobody from the temporal authorities can try any villager from Saint George's manor and tie him without the hegoumenos' trial ... Whosoever be found to have subjected to trial any villager from Saint George's estate ... let him be cursed from all true-believing and sainted Tsars and Kings and let him pay a duty of 200 perpers ... Nobody from my royal dignitaries in my Kingdom can try a man from Saint George's estate ... And if any villager from Saint George's manor be found guilty, only the hegoumenos can try him.

И никто да не сѣди ѹловѣкъ Светаго Гевургиа Гор҃га и побѣдоносца въ бранехъ ѡт власти вишеписанихъ, ни да га свеже безъ игѹменова сѣда ... Кто ли се нагѣ сѣдивъ ѹловѣкъ Светаго Гевургиа ... да естъ проклетъ ѡтъ всѣхъ сихъ правовѣрнихъ и светихъ царь и краль вишеписанихъ, и да плати ѹ цариноу .С. перперъ ... ѹловѣкоу Светаго Гевургиа да не соудѣ никои владоуци по дръжавихъ кралиевства ми ... И кто се нагѣ комоу кривъ ѹловѣкъ Светаго Гевургиа да се при прѣдъ игоуменомъ.⁵

We must note that Saint George's chrysobull was promulgated in the area conquered from Byzantium, and it contains confirmation of previous charters

⁴ Ibid., p. 268.

⁵ Ibid., pp. 317 and 326.

of Byzantine and Bulgarian Emperors. However, Byzantine Emperors exempted three crimes from the jurisdiction of monastic courts: homicide, rape and hoards (φόνος, παρθενοφθορία καὶ εὐρεσις τοῦ θησαυροῦ).⁶ All fines from the quoted pleas were collected by the Imperial treasury, but Emperor Andronikos III Palaiologos ceded even those fines to the monastery of Zographou (charters from 1328 and 1342).⁷

Although feudal courts on monastic estates could not administer justice in all pleas, all fines pronounced by the King's Court concerning the monastery's villagers belonged to the Church. The Church received all the fines, which were seen as a source of revenue for the Church. Already the Žiča chrysobull says that a fine for stubborn refusal of a church serf to appear before the King's Court shall be taken by the Archbishop (Да ако не поиде по печати, то тѣзи да се џписѣю печати џ краља, и да џзима архуєпискѣпъ себѣ).⁸ In Saint Stephen's chrysobull we read: "And wherever a judgment is being made, every fine goes to the Church" (и гдѣ годѣ се соудѣ џини всака глоба цркви).⁹ More precise is the Gračanitza charter: "And wherever a man of the Church¹⁰ is engaged in litigation on King's Court, a fine belongs to the Church" (И гдѣ годѣ се при црковни џловѣкъ на кралевѣ соудѣ да не глоба црковна).¹¹ The Dečani chysobull underlines: "No fines are to be taken by the King" (никоје глобе да не оузима краљ).¹² King and Tsar Stefan Dušan, in his charters written in Greek and presented to the monasteries of Saint John the Baptist on Mount Menoikeion (1345), Iviron (1346), Zographou (1346) and Esphigmenou (1346) on Holy Mountain, says that he ceded all public fines (τὰ δημοσιακὰ κεφάλαια) to the monasteries, including fines for homicide and "rape of a virgin" (τοῦ φόνου καὶ τῆς παρθενοφθορίας).¹³

6 Emperor Andronikos III Palaiologos' charter from the year 1312 to the Russian monastery of Saint Panteleimon on Holy Mountain (*Acta, presertium Graeca, Rossici in monte Athos monasteri*. Акты Русскаго на святомѣ Аѳонѣ монастыря св. великомученика и цѣлителя Пантелеймона, Kiev 1873, p. 166); two charters presented in 1334 and 1347 to the monastery of Esphigmenou on Holy Mountain (*Actes de l'Athos. III. Actes d'Esphigmenou publiés par le R.P. Louis Petit et W. Regel, BB, Приложение къ XIII тому, № 1*, Sankt Petersburg 1906, pp. 26 and 41).

7 *Actes de l'Athos IV. Actes de Zographou*, édités par W. Regel, E. Kurtz et B. Korabiev. vv XIII, Sankt Petersburg 1907, pp. 60, 75, 78, 82. Cf. Solovjev, *Zakonik cara Stefana Dušana*, p. 198.

8 Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

9 *Ibid.*, p. 465.

10 I.e. a tenant of Church lands.

11 Mošin, Ćirković, and Sindik, *Zbornik*, p. 503.

12 Ed. Ivić and Grković, p. 136.

13 Solovjev and Mošin, *Diplomata greca*, pp. 10, 48, 50, 68, 100 and 478.

King Dušan's chrysobull donating the church of the Most Holy Virgin in Lipljan to the Hilandar's pyrgos in Chroussia (1336–1343) guarantees to the church villagers that they shall be tried only by the King and steward (и да имь нѣсть соудѧ, развѣ прѣдъ кралеѣмъ и прѣдъ икономомъ настоящимъ).¹⁴ The charter saved the old privilege according to which local temporal authorities could not try the monastery's villagers.

However, King Stefan Dušan's chrysobull for Htetovo monastery (1343) established a new rule: "And for all litigations that the people of the Church have on My King's Court or before other judges or court dignitaries, great or small, on the territory of My Kingdom, all fines, great or small, pronounced against the Church people shall be taken by the Holy Church" (И цю се пре црьков'ны людие на двороу кралеѣвства ми, или прѣдъ инѣми соудинами, или прѣдъ инѣми владоущими, малыми или великими, въ власти кралеѣвства ми, цю се чини глоба на црьков'ныхъ людехъ мала и великаа, в'се да оузима светага црькы).¹⁵ So, people of the Church could be judged even before local authorities, but the pronounced fines would belong wholly to the Church.

It seems that the new provisions, set up in the Htetovo chrysobull, did not penetrate in all parts of the State, because the Lesnovo chrysobull (1347–1350) orders: "And for all pleas that the bishop cannot judge, let them be brought to me, the Tsar, and no other court shall judge" (И о соудѣ цю се не може расоудитъ прѣдъ епископомъ, да гредѣ прѣдъ царство ми, да инде нигдѣре да имь не боудѣ соудѧ).¹⁶ It is evident that the charters are not consistent, because the Lesnovo chrysobull does not allow judgment of local authorities: all pleas exempted from the feudal church court are in the exclusive sphere of the Imperial Court.

Dušan's Law Code introduced an important transformation of the rule pronounced by King Dragutin's charter to Hilandar (1276–1281), drawing a line between pleas in jurisdiction of King's Court and cases in competence of feudal courts on monastic estates. Article 33, entitled "Of the trial of people of the Church" (Ѡ соудѣ людѣи црьковныхъ), begins with a resolute order: "People on the Church estates are judged before their own Metropolitan, or bishop or hegoumenos for every plea. If the disputants are on the property of one church, they shall be judged before their own church: but if they are of two churches, both churches shall judge them" (Црьковными людѣи въ сакои правѣ да се соудѣ прѣдъ своими митрополити и прѣдъ епископы, и игѣмни; коѣ ста чловека

14 Edited by M. Ivanović, *SSA* 13 (2014), p. 43. Cf. article 194 of Dušan's Law Code, already quoted.

15 Edited by M. Koprivica, *SSA* 13 (2014), p. 150.

16 Novaković, *Zakonski spomenici*, p. 680, para. XXIII.

try on Hilandar's estate, for any plea, major or petty, neither for land, nor for murder, only elders appointed by the holy monastery [may try] and judges appointed by them" (И никто да не соуди метохии хиландарскои ни за еднь соудъ, ни мали ни големы, ни за землю, ни за враждоу, нь да сѣдѣ старци, коихъ посла светии монастырь и соудые коихъ они поставе).²⁰ The second chrysobull speaks on the property of Saint Peter's church, built by Hilandar's elder Gregory, ordering: "Let nobody try on Saint Peter's monastic estate for any plea, major or petty, neither for land, nor for murder, only the authorised Metropolitan of the City of Prizren [may try]" (Никто да не соуди метохии светому Петроу ни за еднь соудъ малъ и голымъ, ни за землю, ни за враждоу, тькмо настоици всаки митрополитъ града Призрена).²¹ However, the document from 2 May adds: "If someone of them [appointed elders and judges] adjudged wrongly, the authorised kephale shall try them according to my Imperial law and before my Imperial Court, as is written in the chrysobull of the Sainted King" (Ако ли се нагнѣ въ нихъ, кто є криво соудилъ, закономъ да га посоуди настоици кнефалѣ и соудимъ царства ми, како имъ пише хрисовоуль светаго крала).²² As a remedy for the unlimited jurisdiction of feudal courts on monastic estates there existed appeal to a court of the kephale of an injustice committed by a Church court as a lower tribunal. Before the court of the kephale, it would be attempted to correct or resolve any error or injustice.

The Church official who tried monastery serfs was appointed by a superior called a hegoumenos (*iguman*, игоумень) and in churches and monasteries that were episcopal sees bishops (*episkop*, епископъ, епискѣпъ, ѣпискоупъ, пискѣп) and metropolitans (*Mitropolit*, митрополитъ). In some cases justice was administered by a steward (*ikonom*, икономъ). The hegoumenos tried either alone or using the monastic estate's officials called *vladalci crkveni* (владальци цркъвни) = "Church dignitaries". Some charters mention special "judges" (*sudije*, соудые) appointed by elders (*starci*, старци). Saint George's chrysobull orders that beside the hegoumenos his *otrok* (отрокъ) may try and collect fines as well.²³ The executive officials on feudal monastic courts were "treasurers who will collect the fines and deliver them to the Church" (... и да се поставе цркъвнихъ людѣ глобарѣ кои ге събирати те глобе, и прѣдавати цркъкви).²⁴

20 Edited by M. Koprivica, *SSA* 15 (2016), p. 114.

21 Edited by S. Mišić, *SSA* 11 (2012), pp. 73–74.

22 *SSA* 15 (2016), p. 114.

23 See Chapter 6, section 3.2.

24 Article 194 of Dušan's Law Code. Burr, "The Code of Stephan Dušan", pp. 537–538; Novaković, *Zakonik*, p. 145; *Zakonik cara Stefana Dušana*, vol. III, p. 276.

1.2 “Court-Baron”

Serbian legal sources promulgated before the Law Code of Stefan Dušan do not contain data on the existence of feudal courts on worldly lords' manors (“Court-Baron” of English law). Dušan's Law Code regulates explicitly only the jurisdiction of temporal lords over *otroci* (“In the case of slaves, they shall be tried before their own lords”), except for crimes considered as *casus regales* (*cas royaux*, pleas of the crown), such as bloodshed, murder, theft, brigandage and harbouring men, when “they shall go before the judges”.²⁵ Article 115, already quoted, mentions a man who “has fled from his lord from court”. According to this wording it is clear that temporal lords also had the right to hold a court on their manors. However, as the second part of article 115 orders, if a villager “produce the Tsar's letter of pardon, it shall not be contradicted”.²⁶ “This clause once more illustrates the tendency of Dušan's legislation to strengthen the hold of the landowners upon their men and their power of judgment over their own villeins and serfs”.²⁷

Dušan's Law Code contains one more provision that implicitly indicates the existence of feudal courts. This is article 183 entitled “Of members of a supply unit” (СЪ СТАНИЦЪ):²⁸ “All members of a supply unit of my Empire who have actions among themselves touching murder, brigandage, theft, killing, harbouring or land, shall appear before the judges of the court” (СТАНИЦИ ВЪСИ ЦАРЬСТВА МИ ДА ГРЕДЪ ПРѢД СОУДЪЕ ЦЮ ИМАЮ СОУДЪ МЕГЮ СОВОМЪ; ЗА ВРАЖДЪ, ЗА ГОУСАРА, ЗА ТАТА ЗА ПРѢВЕМЪ ЛЮДИН, ЗА КРЪВЬ, ЗА ЗЕМЛЮ).²⁹ If we accept the opinion that the Serbian word *stanik* (СТАНИКЪ)³⁰ denotes a member of a supply unit (*komordž-*

25 Article 103. Burr, “The Code of Stephan Dušan”, p. 516; Novaković, *Zakonik*, p. 79; *Zakonik cara Stefana Dušana*, vol. III, p. 126. See Chapter 5, section 3.2.

26 Burr, “The Code of Stephan Dušan”, p. 519; Novaković, *Zakonik*, p. 88; *Zakonik cara Stefana Dušana*, vol. II, pp. 198 and 251; vol. III, p. 130.

27 Burr, “The Code of Stephan Dušan”, p. 519, comment on article 115.

28 The Serbian word is *stanik*, *станик* (СТАНИКЪ), plural *stanici*, *станицу* (СТАНИЦИ). Burr, “The Code of Stephan Dušan”, following the interpretation of Stojan Novaković (*Zakonik*, pp. 256–257), translated the word *stanik* as “shepherd” (p. 535), what is incorrect.

29 Burr, “The Code of Stephan Dušan”, p. 535; Novaković, *Zakonik*, p. 141; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

30 The Old Serbian word *stanik* is not clear, and it has provoked different interpretations. Đuro Daničić supposed with caution that the word means *incola* = colonist, settler (*Rječnik iz književnih starina srpskih*, vol. III, p. 163). Stojan Novaković wrote a whole article (“Was bedeutet СТАНИКЪ in dem Gesetzbuche Stephans Dušans”, *ASPh* 10 (1887), pp. 570–581) trying to explain the meaning of the term *stanik* and expressed the idea that it is a synonym for the words *sebar* (commoner) and *zemljanin* (man of the land). However, preparing the second edition of Dušan's Law Code, he changed his mind and wrote that *stanik* is a general name for all shepherds, stablemen, sheepmen, Vlachs and Albanians.

ija, коморџија),³¹ it would mean that those courtiers had to appear before the judges of the Imperial Court for criminal cases which the Tsar has reserved for his own court. But for petty cases they might be tried before their own elders. Such a conclusion begs being made as article 187 mentions “the elder of the supply unit’s members”³² (старѣи прѣдѣ станови).³³

2 Ecclesiastical Courts (“Court Christian”, *Curia Christianitatis*)

The ecclesiastical courts (in England often called “Court Christian”) is a generic name for certain courts having cognizance mainly of spiritual matters. They had jurisdiction over matters pertaining to the religion and ritual of the established Church, and the rights, duties, and discipline of ecclesiastical persons as such. In mediaeval Serbia ecclesiastical courts administered justice to all clergy for civil and criminal cases and to all the Greek-Orthodox population of the State for the pleas which the Church proclaimed as being in its jurisdiction (so-called *duhovni dljg*, доуховны дльгъ, τὸ ἐκκλησιαστικὸν πρᾶγμα = “spiritual duty”). Church officials tried all commoners living on monastic estates as well. This has already been described above.

2.1 Ecclesiastical Courts over Clergy

Starting from the privileges given to the Christian Church by Roman and Byzantine Emperors (Constantine the Great, Theodosius, Arcadius, Justinian I, and others) and from the canons of Ecumenical Councils, the ecclesiastical court became an important institution of mediaeval society with the exclusive right to administer justice to all clergy. The development of the ecclesiastical court as an independent one was a long process, but it was already completed when

As argument, he quoted articles 187 and 189 of the Code where the wording *stanovi carevi* (становѣ царевн) means “herds of the Tsar” (*Zakonik*, p. 257). But Constantine Jireček (“Das Gesetzbuch des serbischen Caren Spephan Dušan”, pp. 184–185) proved that *stanovi carevi* means “Tsar’s luggage” when he travels. Even the word *stan* can denote “luggage” (*impedimenta*), because article 125 of the Code orders that a traveller has to hand to the innkeeper “his horse and all his luggage” (конѣ и станѣ вѣзѣ). Alexander Solovjev (“Jedna srpska župa”, pp. 31–33; *Zakonik cara Stefana Dušana*, pp. 322–323) fixed the meaning of the word *stanik* on the Tsar’s courtiers whose duty it was to take care of the Tsar’s luggage and who had to supply him and his escort (in Serbian *komordžija*). His opinion was accepted by Teodor Taranovski (*Istorija*, vol. II, p. 131 and vol. III, pp. 143–144) and Nikola Radojčić (*Zakonik Stefana Dušana*, p. 138).

31 Maybe it could be compared to the lord chamberlain of the household of English law.

32 “The elder of the shepherds” in Burr’s translation (p. 536).

33 Novaković, *Zakonik*, p. 143; *Zakonik cara Stefana Dušana*, vol. I, p. 206.

Nemanjić's State appeared on the historical stage. Provisions of Saint Sabba's *Nomokanon* prove that the legal existence of ecclesiastical courts had already been adopted in mediaeval Serbia.

The *Syntagma* of Matheas Blastares contains Chapters Δ (Δ) - 9 and 10, entitled "On courts and lawsuits between clerics and laymen" (Περὶ δικαστηρίων καὶ τῶν δίχας ἔχόντων κληρικῶν τε καὶ λαϊκῶν, Ο σοῦδιлицихъ и пре имоуцтихъ приѣтъники и людинъ) and "On the bishop and cleric who are tried because of their offences" (Περὶ τῶν δικαζομένων δι' οἰκεία ἐγκλήματα ἐπισκόπων καὶ κληρικῶν, Ο πρεцихъ се за своја сѣгрѣшенія епископъ и приѣтъники).³⁴ These two chapters expose the whole historical development of ecclesiastical courts over the clergy, but the Serbian editors of the *Abridged Syntagma* accepted only the final solution, i.e. a *Novel* of the Emperors Herakleios and his son Constantine III (7th century), ordering "that neither civil nor military official may try the bishop, or the cleric or the monk, either for civil or criminal actions; only their bishops, Metropolitans or Patriarchs may judge" (Ἀλλὰ καὶ ἡ τῶν βασιλέων Ἡρακλείου καὶ Κωνσταντίνου νεαρὰ, μήτε ἐπίσκοπον διορίζεται, μίτε κληρικόν, μήτε μοναχόν, χρηματικῆς ἢ ἐγκληματικῆς χάριν αἰτίας παρὰ πολιτικῶ ἢ στρατιωτικῶ ἀνάγεσθαι ἄρχοντι, ἀλλὰ παρὰ μόνοις τοῖς ἰδίοις ἐπισκόποις, ἢ μητροπολίταις, ἢ πατριάρχαις, Нъ и царен Ираклѣа и Кон'стан'тина Новага ни же епископоу повелѣваеѣтъ ни же приѣтъникоу, ни же инокоу иманїа ради или грѣховныхъ ради винъ отъ градскаго или воин'скаго соудимоу быти кнеза, нъ отъ єдинѣхъ своихъ епископъ или митрополитъ или патріар'хъ).³⁵ Which court shall be competent for mixed lawsuits, when one of the parties in judicial proceedings is a cleric and another a layman, the *Syntagma* solves according to the *Novel* of Emperor Alexios I Komnenos (Κομνηνός, 11th–12th centuries), which enacts the classical Roman rule *actor sequitur forum rei*, i.e. the plaintiff follows the forum of the property in suit, or the forum of the defendant's residence (Ἡ δὲ τοῦ Βασιλέως Ἀλεξίου, Εἰ μερισμός, φησὶ, ἐν τοῖς διαμαχομένοις ἐστὶ, καὶ ὁ μὲν τῆς κοσμικῆς φαίνεται καταστάσεως, ὁ δὲ τῷ θεῷ κλήρω ἐγκατεῖλεται, ὁ ἐνάγων τῇ δικαιοῦται τῷ ἐναγομένου ἐκ παντὸς ὑποκίεσται, καὶ ἕκαστος εἰς τὸ πρόσφορον ἀπελεύσεται δικαστήριον, Цара же Алексѣа, аште раздѣленїе, рече, въ соудештихъ се буеть, и овъ оубо мирскаго ҃сть оустроенїа, овъ же божественому прич'тоу сѣуетань ҃сть, познваемъ тогда старѣшинѣ познваемому в'сакъскы подлежить и кждо въ прикладнои ҃моу идеть соудилиште).³⁶ As this way a cleric could be judged by a temporal court, Church institutions demanded that the fines, pronounced to the clergy, belong to the Church, as the Htetovo monastery chrysobull orders

34 Ed. Ralles and Potles, pp. 213–233; ed. Novaković, pp. 224–245.

35 Ed. Ralles and Potles, p. 219; ed. Novaković, p. 229.

36 Ed. Ralles and Potles, p. 219; ed. Novaković, pp. 229–230.

(1343): “And if there is any fine that Church or hegoumenos must pay, all that shall be taken by the Holy Church” (І аще се оучини глоба и на самои црькви, рек’ше на игоуменѣ то все да оузима светага црькы).³⁷

However, lawsuits between the Church and worldly lords touching land were disputed before an inferior State court, but the final decision was made by the Tsar, as article 78, entitled “Of the land and people of the Church” (О земли црьковной), orders: “If the Church has an action with any man touching land or Church people, or one shows a deed of gift and says: ‘I will produce the executor’,³⁸ then let no heed be paid either to the deed or to the executor, but the case shall be tried by the law of my majesty and let the appeal be to my majesty” (О земли, и ѡ людех црьковныхъ. цю имаю съ нимѣи соудъ црьковныи; а кто изнесе милостнѣ книгоу; а или рече милостника имамъ; оу томи зѣи книзе и оу томи милостникѣ ница да нѣсть; развѣ да се соудѣ по законѣ царства ми; нъ виноу да оупросе царство мѣи).³⁹

Dušan’s Law Code in articles 4 and 12 confirmed privileges that the ecclesiastical court had in jurisdiction over the clergy and the whole population for so-called “spiritual duties”.

Article 4 is entitled “Of the spiritual law” (О доуховномъ законѣ) and runs as follows:

And as his spiritual duty, every man must show obedience and submission to his archpriest. And if any man sin before the Church or transgress any of these laws willingly or unwillingly, let him submit himself and give satisfaction to the Church: and if he listens not and disobeys and submits not to the orders of the Church, then let him be separated from the Church.

И за доуховны дльгъ вѣсакъ чловѣкъ да иматъ повиновѣнїе и послоушанїе къ своемѣ ар’хїерею; ако ли се кто вебѣте съгрѣшивъ црькви, или прѣсто-

37 Edited by M. Koprivica, *SSA* 13 (2014), p. 150.

38 The Serbian word is *milostnik* (милостник), derived from *milost* (милост), lit. grace. Burr translated *milostnik* as “almoner” (p. 213), but an almoner is an official who distributes alms and charity, money and help to the poor (A.S. Hornby, with the assistance of A.P. Cowie and J. Windsor Lewis, *Oxford Advanced Learner’s Dictionary of Current English* [London 1975], p. 24; *Webster’s New Universal Unabridged Dictionary*, under the general supervision of Jean L. McKechnie [New York 1979], p. 50). The Serbian *milostnik* was an executor of a certain legal activity or a guarantee that some legal procedure or decision would be carried out (see Chapter 9, section 2.5).

39 Burr, “The Code of Stephan Dušan”, p. 213; Novaković, *Zakonik*, p. 62; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

УПИВЪ ЧТО ЛЮБО УТ СІЕГА ЗАКОНИКА, ВОЛѢМЪ АЛИ НЕХОТѢНІЕМЪ, ДА СЕ ПОВИНЕ И ИСПРАВИ СЕ ЦРЬКВИ; АКО ЛИ ПРѢЧЮЕ И ОУДРЪЖИ СЕ УТ ЦРЬКВИ, НЕ ВЪСХОЩЕ ИСПРАВИТИ ПОВЕЛѢНІА ЦРЬКВИ, ПОТѢМЪ ДА СЕ УТЛОУЧИ УТ ЦРЬКВИ.⁴⁰

The article explains jurisdiction of ecclesiastical courts concerning *duhovni dlj* ("spiritual duty"). *Duhovni dlj* denotes any duty of the faithful towards the Church, i.e. exercise of duties that members of Christian flocks have. If someone transgresses any of these "duties", the archpriest has the right to punish, using spiritual sentences. Article 4 anticipates two different cases: 1) if a layman committed a crime against the Church, i.e. against the rules of canon law, written in "The Laws of Holy Fathers" (*Syntagma* and *Nomokanon*); and 2) if a layman transgressed provisions of the Code, referring to ecclesiastical matters. Such a sinner must repent and regret and be punished by *epitimion*—the appropriate penance for a spiritual offence.

Article 12, entitled "Of spiritual affairs" (У ДОУХОВНОМЪ ДЛЪГѢ), reads: "And laymen shall not judge clerical matters. And should any layman judge an ecclesiastical matter, let him pay 300 perpers. Only the Church shall judge [ecclesiastical matters]" (И ДОУХОВНОМЪ ДЛЪГѢ КОЗМИЦИ ДА НЕ СЪДѢ; КТО ЛИ СЕ НАИДЕ УТ КОЗМИКЪ СОУДИВЪ ЦРЬКОВНОМЪ ДЛЪГОУ, ДА ПЛАТИ .ѿ. ПЕРЬПЕРЬ; ТЪЗКЪМО ЦРЬКОВЪ ДА СОУДЪИ).⁴¹ The influence of ecclesiastics in the Council that promulgated the Code is here seen, protecting their privileges of exemption from the civil courts. The word translated as laymen is *kozmiци*, from Greek κοσμίχοι, worldly as opposed to spiritual men (from κόσμος = world). A fine of 300 perpers was very high and would have been a heavy burden for any perpetrator.

2.2 Ecclesiastical Courts over the Rest of the People or Laity

Ecclesiastical courts in mediaeval Serbia tried laymen as well, either *ratione materiae*, by reason of the matter involved, or *ratione personae*, by reason of the person concerned.

2.2.1 Jurisdiction *ratione materiae*

Ecclesiastical courts tried all Greek Orthodox believers for all crimes against the Church and religion. For other crimes, already punished by civil courts, the Church inflicted upon perpetrators different types of *epitimions* (to fast, to bow low to the ground, to say prayers at home), as additional penalty. If a delinquent

40 Burr, "The Code of Stephan Dušan", p. 199; Novaković, *Zakonik*, p. 9; *Zakonik cara Stefana Dušana*, vol. III, p. 100.

41 Burr, "The Code of Stephan Dušan", p. 200; Novaković, *Zakonik*, p. 16; *Zakonik cara Stefana Dušana*, vol. III, p. 102.

layman refused to accept any type of *epitimion*, the Church could pronounce the ultimate sanction—excommunication (ἀφορισμός, *odlučenje*, отлучение, *segregatio*, *excommunicatio*).

Since marriage in the Eastern Orthodox Church became a holy mystery or sacrament,⁴² all pleas referring to lawful marriage, divorce, dissolution of marriage and adultery were subject to the jurisdiction of ecclesiastical courts. Crimes against canon rules and secular laws concerning marriage were also in the jurisdiction of the Church.

As many persons in the Middle Ages bequeathed a part of their property to the Church or monasteries, the legal operation expressed by the formulas “given for the soul” or “given for the grave”, a will (*testamentum*) began to be considered as a pious, religious act, and the Church aspired that all lawsuits concerning wills would come within the competence of ecclesiastical courts.

The jurisdiction of ecclesiastical courts over all believers *ratione materiae* was recognized in mediaeval Serbia as well, but we do not dispose with surviving rulings, and we cannot conclude exactly how ecclesiastical courts functioned.

2.2.2 Jurisdiction *ratione personae*

Ecclesiastical courts tried certain categories of people who were under the special protection of the Church, such as widows, orphans, beggars, sick people and the freemade. Already the Hilandar *Typicon* orders that the monastery must give shelter to alien and helpless persons (стран'нымъ и немощнымъ оупокоение). For that reason, it notes that there should be established a hospital with skilled sick attendants in the monastery (заповѣдаемъ же изврати бол'нымъ келию, въ образъ добра спѣе бол'ницу и въдрове поставити. болнымъ на възлежение и на покоище, и работника имъ давати, яко симъ работати всѣмъ).⁴³ Tsar Dušan's general chrysobull to Hilandar monastery (1348) says: “And My Imperial Majesty established inside the monastery hospital, to be a refuge for the sick and harmless” (И оучини царство ми въноутрь оу монастыри болницю да естъ покоище болнымъ и недоужнымъ).⁴⁴ The Saint Archangels' chrysobull

42 The Catholic Church, Hussite Church, and Old Catholic Church recognize seven sacraments: Baptism, Reconciliation (Penance or Confession), Eucharist (or Holy Communion), Confirmation, Marriage (Matrimony), Holy Orders, and Anointing of the Sick (Extreme Unction). The Eastern Orthodox Church and Oriental Orthodox Church also believe that there are seven major sacraments, but apply the corresponding Greek word μυστήριον (*mysterion*), also to rites that in the Western tradition are called sacramentals and to other realities, such as the Church itself.

43 Chapter 38 and 40, ed. Jovanović, pp. 112 and 116.

44 Edited by Mišić and Koprivica, SSA 14 (2015), p. 69.

confirms that Tsar Dušan endowed a hospital in the monastery (иже кєсть при-ложило било царьство ми бол'ницѣ и съ двор'ми). A few lines further we read an order: "And for the hospital, let it be as the King enacted, with 12 beds; who falls ill let him stay in hospital, but not the lame and blind" (А за болницю како кє оузаконилъ кралъ такози да стонъ .xl. вѣдра, и кто се разболи да кє оу болници, а хромца и слѣпца да нѣ).⁴⁵ The charter makes a difference between medical treatment and custody of lame and blind persons. Lame and blind persons could not stay in hospitals, but some sources testify that the Church took good care of them. For example, Tsar Stefan Dušan's and King Stefan Uroš's charters to Jacob, Metropolitan of Serres (1352–1353), mentions among the Church people a certain "Hrousse, blind man" (А се людине црьковны кє хроче слѣп'ць).⁴⁶ Finally, article 28 of the Code, entitled "Of feeding the poor" (О хране оубогиѣмъ), orders: "And in all churches the poor shall be fed as is written by their founders" (И по вѣсѣхъ црьквахъ да се хране оубогиѣ, како кєсть оуписано въ ктиторѣ).⁴⁷ All those wards of the Church were under the jurisdiction of ecclesiastical courts.

3 City Courts

As we have already noted, the urban population in mediaeval Serbia did not represent a unique, autonomous class (*tiers état*), as was the case in Occidental European monarchies. However, some elements of autonomy were present, especially in the court system and trial procedure.

3.1 Kotor

In the city of Kotor there existed two courts: *Curia parva* ("Petty Court") and *Curia*. However, *Curia parva* was not a court of first instance and *Curia* an appellate court (a court having jurisdiction of appeal). *Curia parva* administered justice for petty offences, minor crimes, the maximum punishment for which was a fine of 10 perpers. *Curia* administered justice for major crimes, punishable with fines higher than 10 perpers. As appeal was allowed only for cases to the value of more than 50 perpers, sentences of *Curia parva* and *Curia* for minor crimes (up to 50 perpers) were legally valid without any legal redresses

45 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, pp. 90 and 112.

46 Edited by G. Bojković, *SSA* 15 (2016), p. 94.

47 Burr, "The Code of Stephan Dušan", p. 203; Novaković, *Zakonik*, p. 27; *Zakonik cara Stefana Dušana*, vol. III, p. 106.

(*A sententia vero data usque ad summam quinquaginta yperperorum, vel valoris inde infra nemo valeat appellare*).⁴⁸

Curia parva consisted of three judges, elected from the nobility for six months (*quod de sex in sex mensibus, secundum statutum eligantur tres Nobiles, Iudices parvae Curiae*).⁴⁹ They did not have a fixed monthly salary, but they got from litigants so-called *aptagias* (*Qui Iudices habeant a partibus litigantibus, secundum consuetudinem aptagias*).⁵⁰ *Curia parva* tried all citizens of Kotor and all strangers, except Serbs, Albanians and Vlachs who lived in the town-district. They had their own judges, so-called *Comites Sclavorum*.

In 1400, *Curia parva* was dissolved and its jurisdiction transferred to the Prince (*Comes*) and judges of *Curia*. Each of them could administer justice individually.

Curia was made up to the Prince (*Comes*) and three judges. The Prince took an oath that declared that he would, *inter alia*, administer justice equally to all, great and small (*iustitiam aequaliter maioribus et minoribus tribuam manutenens*).⁵¹ The Prince could pronounce sentences with one of the judges up to the value of 25 perpers. The Statute calls judges *iudices annuarii*, because their term of office was one year. The judges were not educated lawyers but ordinary people. However, all their decisions had to be promulgated in accordance with the Statute regulations (*ac omnibus faciant et reddant iustitiae complementum, secundum formam Statutorum nostrorum*).⁵² Judges swore an oath that they would try without fraud, according to the Statute and customs (*iudicabo sine fraude secundum Statutum Civitatis Cathari, et consuetutinem*).⁵³

Judges had to try in court on Mondays and Saturdays, but if they wanted they could administer justice on any other day, and litigants had to appear at court (*Volumus quod Iudices qui pro tempore fuerint, teneantur sedere, et iudicare omni die Lunae, et omni die Sabbati ... si necesse fuerit, et si in diebus aliis iudicare voluerit, omnes respondere teneantur*). Court actions concerning sales and all offences had to be tried every day when judges were in the city and to be terminated within three months (*et omnibus aliis diebus cum in Civitate fuerint iudicent de venditis, et omnibus maleficiis, et teneantur non prolongare senten-*

48 Cap. CCCXC, *De iudicis et appellationibus, Statut grada Kotora (Statuta civitatis Cathari)*, vol. I, p. 220.

49 Cap. XIII, *De electione et officio Curiae parvae, Statut grada Kotora*, vol. I, p. 9.

50 Ibid., p. 10. *Aptazi* is an old notarial term from Dubrovnik, a kind of obligation with a designation of debt money. See Skok, *Etimologijski rječnik*, vol. I, p. 49.

51 Cap. XXVI, *De sacramento comitis, Statut grada Kotora*, vol. I, p. 15.

52 Cap. I, *Statut grada Kotora*, vol. I, p. 2.

53 Cap. XXVII, *De sacramento Iudicis, Statut grada Kotora*, vol. I, p. 16.

tias ultra tres menses).⁵⁴ From 1 August to Saint Michael's Day (29 September) there were no trials (*Statuimus quod a primo die mensis Augusti usque ad festum Sancti Michaelis nulla quaestio per aliquem coram Iudicibus iuratis fiat*).⁵⁵ The court vacation was fixed on that term because of summer heat, but also because of harvest-time and vintage. Initially, judges were not paid, and it seems that abuses of office became very common (*Quia multa, et enormia damna sustinebamus propter negligentiam Iudicium iuratorum*), although judges swore that they would not take bribes. Later on judges got salaries: first 12 and than 25 perpers.⁵⁶ All other incomes from lawsuits judges had to deliver to the treasurers of the Commune (*omnes introitus provenientes eis de Curia, vel de iudicio sui temporis, sint Communitatis; quos introitus ipsi Iudices teneantur extrahere, et assignare Camerariis Comunitatis*). If they refused to do that, they had to pay the Commune from their own property and an additional fine of 25 perpers (*quod si non fecerint, de suo proprio Comunitati solvere teneantur, et etiam de poena solvant Comunitati ypperperos vigintiquinque*). Exceptionally, they could take one *groschen* from the promulgation of sentences and one perper from court stamp-taxes (*excepto quod habeant unum grossum pro carta sententiae danda, et ypperperum unum de contumacia, et refutatione Curiae*).⁵⁷

At every lawsuit, a notary was present together with the judges (*volumus et ordinemus ... quod Notarius sedeat cum Iudicibus omnibus diebus iudicadi*). His task was to examine the laws, read documents and take a note of statutory provisions and lawsuits (*ad audiendum legas, et cartas legendas, et statuta et questiones scribendas*). From every sentence the notary had one *groschen* (*de omni carta sententiae habeat idem Notarius unum grossum*).⁵⁸

The place where the trial was held (venue) was always out of doors—usually Saint Tryphon's Place (*in platea s. Triphonis*) or the Coastal Place (*super plateam Marinae*). The only court mark was a bench—a long seat of wood where judges and notaries sat during the trial (*sedere ad banchum*). A bench was usually placed under a porch (*sub lobia*). If necessary, judges went out of town (in the district) and pronounced sentences on the spot.

54 Cap. XLVI, *De tempore iudicandi a Iudicibus, Statut grada Kotora*, vol. I, p. 30.

55 Cap. XLIX, *De legibus non habendis mense Augusti assiduantibus usque ad festum Sancti Michaelis, Statut grada Kotora*, vol. I, p. 31.

56 In the printed version of the Statute a salary of 25 perpers was mentioned in Chapter I (p. 2), and a salary of 12 perpers in Chapter LI, *De salario Iudicium* (p. 32). So, older provisions were printed behind younger, which is hard to explain.

57 Cap. CI, *De salario Iudicum, Statut grada Kotora*, vol. I, pp. 32–33.

58 Cap. XLVII, *De Notario quod sedeat cum Iudicibus, Statut grada Kotora*, vol. I, p. 30.

If any citizen of Kotor asked for legal protection from the Serbian King, the Commune would consider that as a rude violation of City autonomy. According to the decision of the legislative Council promulgated in 1301,

if any of our citizens wanted to do something with the Sovereign Lord [i.e. Serbian King], by force and against the provisions, liberties and honour of our City, and the fine [from that lawsuit] would belong to the King, with or without deed, or charter,⁵⁹ let him pay a penalty and fine of 50 perpers. And to the person, against whom he brought the deed or charter from the Sovereign Lord ... let him pay another 500 perpers and all damage and expenses. And if he cannot not pay the fine and damage, let him be banished from the City.⁶⁰

quod si aliquis ex nostris civibus presumeret facere aliqua cum Dominatione, per quae poena aliqua cadat Dominationi, cum carta, vel sine carta, seu povella, quae a Dominatione portata fuerit, vel per vim propriam contra ordinationem, libertatem, et honore civitatis nostrae, solvat de pena et de bando Communitati nostre yperperos 50. Et illi super quem povellam, seu cartam a Dominatione portaverit ... solvat alios quingentos yperperos, et omne damnum, et expensas et si poenam, et damnum praedictum unde solveret non haberet, in posterum sit forbanditus de civitate.

3.2 Budva

In Budva there existed a board of three judges (*giudici*) who were public servants with great power and reputation. Their task was to put into practice statutory provisions promulgated by the city authorities. As executive and judicial power in Budva were not separated, judges attended to administrative business as well. They made suggestions for different decisions of the Great and Small Council. In their jurisdiction was inspection over city revenues and expenses, but they had the help of eight councillors (*consiglieri*).⁶¹ However, it is not clear whether judicial council consisted of two or three judges. The Statute provides only that cases to the value of 2 perpers may be disputed by a single person (only one judge).⁶²

59 The text used the Slavic word *povella* (*povelja*, *повѣља*) = charter.

60 Cap. CCCXLIX, *De cartis, et povellis adductis a Dominatione contra consuetudinem Civitatis, Statut grada Kotora*, pp. 189–190. Cf. Sindik, *Komunalno uređenje Kotora*, pp. 109–112.

61 Cap. 82, 123.

62 Cap. 75, 94, 109, 280.

However, under the rule of the Republic of Venice, the executive and judicial power of judges declined. They administered justice only in civil trials, while criminal trial procedure was under the jurisdiction of a mayor (*podestà*).

When Budva was part of the Serbian mediaeval State, it retained judicial autonomy. Tsar Dušan confirmed those rights of the city in the Statute. However, from the jurisdiction of Budva's court were excepted the crimes of treason (*infedeltade*), homicide (*homicidio*), trespasses concerning slaves, male and female (*de servo et de serva*) and horses, stolen or dead (*de cavallo rubbato o morto*).⁶³ Those crimes were in the jurisdiction of the Imperial (Serbian) Court. Budva's judges could not try clerics, heretics, monks, usurers or husband and wife in their lawsuits concerning dowry. All those cases were under the jurisdiction of the bishop and his vicars.⁶⁴ This provision was partly abolished in the epoch of the Despotate: clerics could be summoned to appear in court, except in the case of a crime (*maleficio*) or when "Church reasons" (*ragioni della chiesa*) were against a summons.⁶⁵

The venue was always out of doors, but we do not know where. A document from the epoch of Venetian domination testifies that judges were sitting "on the bench for judgment" (*alla banca per giudicare*), under the "loggia of Barbakan". We can suppose that such a practice existed earlier as well.⁶⁶

3.3 *Novo Brdo*

According to the provisions of the Law of Mines, regulating the legal status of German miners (so-called *Sasi*, i.e. Saxons) living and working in Novo Brdo, the most important mine-city in mediaeval Serbia, three types of courts existed in the town.

63 Cap. 3. A similar provision is contained in the Statute of Skadar (*Statuta Scodrae*) in Chapter 11 (*Capitolo 11, De casi che de' zudegar lo re*, ed. Bogojević-Glušćević, p. 107): *Deba saper ciaschun che miser lo re d'ognu caso che venissi in citade concedi a li zudesi de zudegar, come a citadino, a Sciavo, a Arbanese et ciaschun stranier d'ognu cosa, salvo de quatro cose, cioè imprimeramente de infedeltate, de homicidio, de servo et de ancilla, de cavallo et de questi cosi de' zudegar miser lo re stesso.*

64 Cap. 128. According to Chapter CXXXIII of the Statute of Skadar (*Capitolo CXXXIII, De costion clerico cum laico*, ed. Bogojević-Glušćević, pp. 155–156), lawsuits between clerics and laymen should be tried by bishop and judges, and if the bishop was absent he could be replaced by a vicar (*Ordinemo si alcun laico avesse alguna custione cum clerico, vulemo qui quella costione la debia zudegar lo viscovo cum li zudesi secondo lo Statuto e li usanzi de la nostra citade ... E si lo vescovo non fosse, chi se faza cu li vicarii*). However, The Statute of Skadar, written in mediaeval Italian, cannot be strictly considered as a source of Serbian mediaeval law, so we do not describe it under a separate title.

65 Cap. 256. Cf. Bujuklić, *Pravno uređenje srednjovekovne Budvanske komune*, pp. 58–59.

66 Bujuklić, *Pravno uređenje srednjovekovne budvanske komune*, p. 240.

Article 6 of the Law of Mines has the title “On the law of smeltery and miner’s hole” (Ѡ колскѣм законѣ и рѣпнем).⁶⁷ Further in the text we read that lawsuits in smeltery (Ѡо соутѣ колскы соудови), referring to coal (за оугленѣѣ), ore (за рѣдѣ), workers in a smeltery (за смѣаچارѣ, за оупкапарѣ, и за чистилацѣ за конюхѣ),⁶⁸ transportation of load (за фѣровѣ)⁶⁹ and ground (за грѣнтѣ)⁷⁰ were under the jurisdiction of the “Court of the Customs Officer” (соуд царинички).⁷¹ Customs officers in mediaeval Serbia were private persons, mostly Ragusans (Dubrovčani) who took leases of duty collection and mines as tenancy for a number of years. Ragusans were not subjects of the Serbian monarchs, and they had their own courts that tried them, although they were living in the territory of Serbia for a long time. As foreigners, could Ragusans administer justice in Serbia, even for petty offences? In our opinion it is hard to believe, because the same article 6, a few lines later, mentions a “court of miner’s hole”, where the judges were customs officers and so-called *urbarari*;⁷² they judged for petty

67 Ed. Radojčić, *Zakon o rudnicima*, p. 52. For smeltery the Law of Mines uses the word *kolo* (коло) = *rhombus*, *machina rei metallica*, *der Haspel*, *das Haspelrad* (Radojčić, p. 76). In modern Serbian and Croatian *kolo* means wheel dance, wheel, circle, round, ring and series (of books), while the word for smeltery is *topionica* (топионица). For a miner’s hole (opening) the Law of Mines uses the word *rupa* (роупа), which in modern Serbian means hole, gap. But in our text *rupa* is *foramen*, an artificial hole, made by drilling and digging, not *specus*, i.e. a natural hole (Radojčić, p. 82).

68 The Law of Mines mentions four types of workers in smeltery whose appellations are very hard to translate: 1) *smiačar*, смѣаچارѣ, mediaeval German *smëlzer*, *schmelzer*, a worker who puts ore in a furnace to be melted, who takes care of the furnace’s working order and repairs it; 2) *upkarar*, оупкапарѣ, a worker in a smeltery who received ore and transported it to the furnace; 3) *čistilac*, чистилацѣ, a worker in a smeltery whose task was to set apart silver from lead; 4) *konjuh*, конюхѣ, *equiso*, a worker who took care of horses (Radojčić, *Zakon o rudnicima*, pp. 82, 84, 88 and 76; Marković, *Zakon o rudnicima*, p. 21).

69 *Fur*, фѣрѣ, German *der Fuhr*, *die Fuhre*, Latin *itio*, *vectio* (Radojčić, *Zakon o rudnicima*, p. 86).

70 *Grunt*, грѣнтѣ, mediaeval German *Grunt*, used even today in northern regions of Serbia, which were up to 1918 parts of the Austro-Hungarian monarchy. The Serbian word is *zemljište* (земљуште). It is not clear what *Grunt* means in this context.

71 It is not clear whether this was an official name of this court. Biljana Marković (*Zakon o rudnicima*, p. 51) suggested this appellation, because it was used in the text of article VI. However, Mehmed Begović in his paper “O nadležnosti rudarskih sudova po Zakonu o rudnicima despota Stefana Lazarevića i turskim rudarskim zakonima XV i XVI veka” [“On the Jurisdiction of Miner’s Courts according to the Law of Mines of Despot Stefan Lazarević and Turkish Laws of Mines from the 15th and 16th Centuries”], *Spomenica SANU* 30 (1967), p. 11, calls this court *Kolski sud* (smeltery court), according to the title of article VI and its first sentence.

72 *Urbarar*, оурбарарѣ, *urbararius*, was a State official who gave concessions for the working

offences, while major crimes were tried in council,⁷³ according to the law (А цю є рѣпни соудъ да соудѣ цариници и оурбарари цю соу мале работе и дровни соудовы, а цю є за дѣлове и за ине големе работе да идоу цариници и оурбарари да имь соудѣ съборно по закону).⁷⁴ However, it seems that customs officers in Serbia were not always private persons, but sometimes civil servants too. This is clear from the oath of Ragusan Doge Johannes Dandulus, confirming his friendship to Serbian King Stefan Vladislav (1234–1235), where we read: “And your [King Vladislav’s] customs officer shall stay with us” (И цариникъ твои да стои ѿ насъ).⁷⁵ Article 120 of Dušan’s Law Code mentions “an Imperial customs officer” (цариникъ царевъ)⁷⁶ who was, beyond any doubt, the Tsar’s servant and not a private person. So, it is quite possible that judges of the so-called “Court of the Customs Officer” were State officials (customs officers and *urbarari*) and not private persons (lessees or tenants of customs). However, it is not clear whether the customs officer (*carinik*) and *urbarar* administered justice together (collegially) or individually nor do we know what the jurisdiction of each of them was.

Article 4, entitled “On the Court of the Duke and Count” (У сѣдѣ воеводѣ кнезѣ), orders: “The Duke and Count can try cases that have a value of one liter, and for hereditary estates and for a great matter, the Count with protopop and Duke and respectable citizens⁷⁷ and “good men”⁷⁸ who are living in the city shall try in the Council” (Воевода и кнезь да соу волни соудити цю є вредно, а.

of a mine and collected so-called *urbor* (оурборъ), a tax that had to be given to the State for the extraction of ore (Marković, *Zakon o rudnicima*, p. 14).

73 It is not clear what type of council this would be. According to Mehmed Begović (“O nadležnosti rudarskih sudova”, p. 12), it was a town-council, that beside executive power had judicial power as well.

74 Radojčić, *Zakon o rudnicima*, p. 52.

75 Mošin, Ćirković, and Sindik, *Zbornik*, p. 135. Cf. Ivanović, *Prilozi za istoriju carina u srednjovekovnim srpskim državama*, p. 29.

76 Burr, “The Code of Stephan Dušan”, p. 520; Novaković, *Zakonik*, p. 92; *Zakonik cara Stefana Dušana*, vol. III, p. 132.

77 The original word is *purgari*, from mediaeval German *burgaere*, *bewohner einer burc*, *bürge*. Radojčić, *Zakon o rudnicima*, p. 82.

78 Serbian “dobri ljudi” (“добри људи”), *boni homines*, “good men”: in old European law a name given to the tenants of a lord, who judged each other in the lord’s court. On the meaning of the term *boni homines* in the Law of Mines, see M. Ivanović, “Dobri ljudi Novobrdskog Zakonika despota Stefana Lazarevića” [*“Boni homines” of Despot Stefan Lazarević’s Law of Mines from Novo Brdo*], *ИЧ* 44 (2015), pp. 159–187. On *boni homines* in mediaeval Serbia, see M. Ivanović, “Dobri ljudi” u srpskoj srednjovekovnoj državi [“Good Men” in the Serbian Mediaeval State] (Belgrade 2017), and Đ. Bubalo “Dobri ljudi”, in *LSSV*, pp. 161–162.

ЛИТРЪ А ЦЮ Ё ЗА БАЩИНЕ И ЗА ИНЕ ГОЛЕМЕ РАБОТЕ ДА ИДЕ КНЕЗЪ С ПРОТОПОПЪМ КОН ВОЕВОДЪ И С ПОУРГАРИ И ДОБРИ ЛЮДИ КОН СЕ НАХОДЪ ОУ МЪСТЪ ДА СОУДЪ СЪБОРНО).⁷⁹ As we can see, the Duke (*voevode*)⁸⁰ and Count (*Knez, Comes*)⁸¹ could administer justice for petty cases, and it is possible that they tried individually. "Great things" (*goleme rabote*) were tried by a body consisting of Duke, Count, protopop, 12 citizens and a jury, with an indeterminate number of jurors.

Article 5 mentions an "Ecclesiastical Court" (ЦРКОВНИИ СОУДЪ), ordering: "In the ecclesiastical court, the protopop shall summon priests to judge justly, according to the law, and nobody can interfere" (ЦЮ Ё СОУДЪ ЦРКОВНИИ ПРОТОПОПА ДА СЪЗОВЕ ПОПОВЪ ДА СОУДЪ ПО ЗАКОНОУ ПРАВО ЗА ТОИ ДА НЕ ИМА НИТКО НИЕДНОГА ПОСЛА).⁸² Like article 12 of Dušan's Law Code, the Law of Mines protects the ecclesiastics' privilege of exemption from the civil courts. As German miners were Roman Catholics, within their right to confess their religion was the privilege to have Roman Catholic ecclesiastical courts.

3.4 *Towns Conquered from Byzantium*

In the large territory of the Byzantine Empire which became a part of the Serbian State of Tsar Stefan Dušan were located a number of Byzantine cities. Their urban rights were confirmed in article 124 of the Code, but for judicial autonomy the most important is article 176:

All towns which are in my dominion shall be in relation to the law in all things as they were in the days of the first Tsars. For suits which citizens have between themselves, let them be judged before the prefects of the towns. Or before the Church courts. And if a man from the country have a case with a citizen let him sue before the prefect of the town and before the Church and the clergy. According to the law.

79 Radojčić, *Zakon o rudnicima*, p. 52.

80 Dukes (*voevode*) were military commanders in mediaeval Serbia. According to article 129 of Dušan's Law Code they "have authority even as the Tsar himself", and they could judge in the army. During the reign of Despot Stefan Lazarević, *voevode* were at the head of the new administrative areas called "vlasti" (regions).

81 It is not clear who come under the definition of Count (*Knez, Comes*) as mentioned in article 14: an official appointed by the Despot or Saxon's Count, i.e. the miners' superior elected among German workers (so-called Sasi), as Biljana Marković suggests (*Zakon o rudnicima*, p. 55). King Dragutin's charter presented to the Ragusan merchants (1277–1281), mentions the Saxon's Count *Prebegar* (ПРЕБЕГАРЬ, *Comes Freiburgerius*) who was the miners' superior in the city of Brskovo (actuel Mojkovac in Montenegro). Mošin, Ćirković, and Sindik, *Zbornik*, p. 274.

82 Radojčić, *Zakon o rudnicima*, p. 52.

Градове вѣси по земли царства ми, да сѣ на законѣ ѿ вѣсѣмь како сѣ били
 оу прѣвѣхъ царь; а за соудове цю имаю мегю собомь, да се соуде прѣд вла-
 далци градскими, и прѣд црковнымъ клиросомъ, а кто жоупланиниъ при
 гражданина, да га при прѣд владалцемъ градскимъ, и прѣд црковнымъ, и
 прѣд клиросомъ по закону.⁸³

The wording of article 176 is not quite clear: the beginning of the first sentence amplifies the confirmation of the urban rights of all towns in the Empire. However, further on the text says “shall be in relation to the law in all things as they were in the days of the first Tsars”. The “first Tsars” (Emperors) could denote only Byzantine Emperors, Dušan’s predecessors in the conquered regions. According to that, the provisions of article 176 refer to Greek (Byzantine) towns, confirming them judicial autonomy that existed during the reign of Byzantium. It then proceeds to give judicial power to secular officials, here called *vladalci*,⁸⁴ and to the ecclesiastical authorities.

Among the Byzantine towns which became part of Dušan’s State, Serres assumed the most important position as a political as well as ecclesiastical centre, because of its metropolitan rank. Examination of judicial documents from Serres, issued between 1348 and 1388, confirms the existence of a mixed city-court, composed of ecclesiastical and secular officials, as prescribed in article 176 of the Code. Members of the clergy constituting the court were the following: 1) *oikonomos* (ὁ οἰκνόμεος), whose duty was the management and disposition of Church property; 2) *sakellarios* (ὁ σακελλάριος), the official in charge of the finance of the metropolitan and episcopal seats; 3) *skeuophylax* (ὁ σκευοφύλαξ), who was in charge of the ecclesiastical furniture, liturgical books, precious objects, relics, etc.; 4) *chartophylax* (ὁ χαρτοφύλαξ), who composed, signed and sealed episcopal decisions, heard confessions and granted absolution, and issued or withdrew marriage permits; 5) *sakellios* (ὁ σακελλίου), who was in charge of Church movable property and renting of the ecclesiastical lands; and 6) *protekdikos* (ὁ πρωτέκδικος) or *dikaio* (ὁ δικαίος), the legal representatives. Among temporal officials, members of the court were always *kephale* or *ex-kephale*. Two of them, whose signatures were found on one of the surviving documents, were jurists who held the post of “Universal Judges of the Romans” (οἱ καθολικοὶ κριταὶ τῶν Ῥωμαίων). The “Universal Judges of the Romans” were a supreme court in Constantinople, Thessaloniki and some

83 Burr, “The Code of Stephan Dušan”, p. 534; Novaković, *Zakonik*, pp. 137–138; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

84 *Vladalci* was the general name used for court dignitaries but also for the *kephale* (prefect of the town) and headman of a village. See Chapter 9, note 116.

other parts of the State, created as a result of the judicial reform of Emperor Andronikos III Palaiologos in 1329. There was no appeal from its decisions.⁸⁵ It seems that the institution of “Universal Judges of the Romans” was created in Serres after Dušan’s Empire vanished and the town became the centre of a separate State under the rule of Despot John Uglješa.⁸⁶

Beside Serres, such mixed courts existed in Zichna, Christopolis and Melnik and maybe in Skoplje, Prizren, Ochrid and Peć.⁸⁷

3.5 *Courts for Foreigners*

Foreigners living in Serbian cities and market-towns enjoyed some rights of power of self-government and judicial autonomy. However, on that type of autonomy we have no information in legal documents, except some general data on separate courts for Ragusan merchants and Saxon miners.⁸⁸

According to the Statute of Dubrovnik from 1272, it was forbidden to all Ragusans (Dubrovčani), residing in Serbia, to bring their mutual lawsuits to the Serbian court. They could appear in court only in Dubrovnik or administer justice to the Ragusan consuls.⁸⁹

According to our historical sources Ragusans had their consuls in Serbia already in the second half of the 13th century. There were two consuls: the *consul generalis* for the whole country and a consul appointed just for a single law case, with two assistants (*duo boni homines mercatores*, later called *iudices*). At the beginning, the consul dwelt in Brskovo (already by 1278) and later in Rudnik.⁹⁰ In 1311 there existed a separate consul for the territory of “Senior King” Stefan Dragutin. By the decision of the Republic of Ragusa from 17 October 1325 a permanent representative for the whole territory of Serbia was estab-

85 On the Universal Judges of the Romans, see P. Lemerle, “Le juge général des Grecs et la réforme judiciaire d’Andronic III”, in *Mémorial Louis Petit* (Bucarest 1948), pp. 292–316.

86 On this State, see Ostrogorski, *Serska oblast*.

87 For more details see Solovjev, “Sudije i sud po gradovima Dušanove države”, and Živojinović, “Sudstvo u grčkim oblastima srpskog carstva”.

88 On courts for Saxon miners see section 3, Novo Brdo.

89 *Liber statutorum civitatis Ragusii*, *Liber III*, cap. 11, *Statut grada Dubrovnika*, p. 226.

90 Rudnik (Serbian Cyrillic *Рудник*, meaning *mine*) is a mountain and village in central Serbia, near the town of Gornji Milanovac, about 100 km south from Belgrade. The mountain’s highest peak has an elevation of 1,132 metres above sea level, while the village has a population of 1,490 people. The rich mineral resources of the mountain (silver, lead and copper) were an important source of wealth to Serbian mediaeval rulers. Besides mining, Rudnik was a settlement with developed handicrafts and a thriving trading post with a cosmopolitan population that influenced the whole of Serbia. Even today, Rudnik is an important mining centre. By 2017, the lead and zinc mine “Rudnik” became one of the most successful mining companies in Serbia.

lished, called *consul mercatorum Ragusinorum, conversantium in Sclavonia*. He was appointed for one year with a salary of 400 perpers. He had no right to trade, and he had to be present always in any place where the Serbian King and his court engaged in. With the renewing of these provisions (8 March 1332) it was decided that the consul had to live in Prizren at the expense of Ragusan merchants from the whole of Serbia. His duty was to visit all big fairs (*omnes magnas fieras*) of the country and, according to the request of Ragusan merchants, travel to the King's Court. The consul had to visit all the market-towns of Serbia (*omnia mercata Sclavonie*) twice a year, where Ragusan traders stayed, and had to administer justice between his fellow-countrymen. In cases of major crimes he had to take advice from the Ragusan colony-merchants of Prizren. When Prizren lost its importance, the consul moved to Novo Brdo.⁹¹

Until the second half of the 14th century, Ragusan consuls tried according to the rules of customary law. However, on 17 December 1387, the Ragusan Great Council (Latin *Consilium Maius* or *Magnum*, Italian *Maggior Consiglio*, Croatian *Veliko Vijeće*, Serbian *Велико Веће*) promulgated a law regulating the election and jurisdiction of Ragusan consuls in Serbia, Bosnia, Sirmium and Bulgaria (*De ordinibus consulis eligendi pro iure redendo inter Raguseos in Sclavonia, Bossina, Sremia et Burgaria*). The consul administered justice together with two Ragusan noblemen, but in the absence of them with two respectable commoners (*popularis*). Ragusans residing in Serbia were not obliged to accept the consul's jurisdiction; if they preferred, they could go to court in Dubrovnik. However, any litigant who had accepted the consul's court had to accept its sentence. For the execution of rulings, as necessary, the consul could ask Serbian officials for help, for which he had to pay 10% from the pronounced amount.⁹²

Confirming the old Ragusan's privileges, Prince Lazar in the treaty from 9 January 1387 orders:

For lawsuits that Ragusans have among themselves, either litigation was in Serbia, or in Dubrovnik, legal proceedings shall be before the Ragusan consul and his judges, and every sentence that the consul and his judges deliver, let it be confirmed. If any Ragusan would not like to appear before that court, the consul and his judges could tie that person and hold him

91 Jireček, *Istorija Srba*, vol. 11, pp. 179–180.

92 *Liber viridis*, cap. 63, edited by B. Nedeljković (Belgrade 1984), pp. 31–36. The so-called *Liber viridis* ("The Green Book", because of the cover's colour) was a collection of Ragusan laws promulgated between 28 February 1358 and 27 November 1460. It was followed by the *Liber croceus* ("The Yellow Book"), containing laws from 10 December 1460 to 26 January 1803 (edited by B. Nedeljković [Belgrade 1997]).

until he pays a pronounced amount. And that law may not be changed by neither a kephale nor any other official.

и цю се прѣ мегѣ собомъ Дѣбровчане или се бѣде ѣчинило ѣ Срѣблихъ или ѣ Дѣбровникѣ да се прѣ прѣдъ кѣньсѣлѣмъ Дѣбровѣчкимъ и прѣдъ нѣхъ сѣдинѣми и цю сѣди кѣньсѣлъ и неговѣ сѣдинѣ на томъ да стоѣ; ако ли би не хѣлъ Дѣбровчанинѣ стоѣти на вномзи сѣдѣ да ѣ вольнѣ кѣньсѣлъ и неговѣ сѣдинѣ вногази свѣзати и дрѣжати до гдѣ плати ѣ цю ѣ вѣсѣгенѣ. а да тогаи закона не вольнѣ потворити кѣфалинѣ ни владалѣцѣ.⁹³

As we can see, the two documents from the same year have almost identical content.

4 So-called “Stanak” (*Stanicum*)

“Stanak” (*stanicum*) is an old legal term used among South Slavs with different meanings. It comes from the verb *stati se* (*sastati se*, in modern Serbian), meaning to meet, to come together, to have a meeting. In legal documents, *stanak* took on significance in three ways. First, and most important for our work, is the technical term denoting the mixed-court for lawsuits between Ragusans, their neighbouring countries (Serbia, Bosnia), and some towns in Dalmatia (Zadar, Šibenik, Trogir, Omiš, Split, today all in Croatia), Bay of Kotor and North Albania (so-called *Dalmacia Superior*, “Upper Dalmatia”). *Stanak* was, as well, the most common name used to refer to the assembly of nobility in mediaeval Bosnia, also known as the *Rusag* (from the Hungarian word *ország*, meaning country). Beside the mixed-court and assembly of nobility, *stanak* could also mean any meeting of two parties for the purpose of negotiations. The testimony for such a meaning of the word can be found in the will of magister Antonius de Montefiore (*Testamentum magistri Antonii de Montefiore*),⁹⁴ King Dušan’s physician, which was composed in January 1337.⁹⁵ The text mentions a debt of Nicholas Buće (Nicola de Buchia), King’s *protovestiarios* (πρωτοβεστιάριος), for some high-quality fabrics (*pro frisis magnis et subtilibus*), which were delivered “when we were in a meeting [*stanak*] with the Emperor of Byzantium” (*quando*

93 Edited by Mladenović, A., *Povelje kneza Lazara*, p. 193.

94 Montefiore, modern Montefiore dell’Aso, is a *comune* (municipality) in the Province of Ascoli Piceno in the Italian region of Marche, located about 70 km southeast of Ancona.

95 The document was edited by M. Dinić, in “Krstasti groševi” [“Crossed Groschen”], *ZRVI* 1 (1952), pp. 109–111.

fuimus ad stanicum cum imperatore Romanie).⁹⁶ However, we shall examine the word *stanak* only in the sense of the mixed border-court for lawsuits between Serbs and Ragusans.

The border-court for litigations between Serbs and Ragusans was already mentioned in the oldest treaties of Serbian monarchs with Dubrovnik (without using the word *stanak*), and the Statute of the Republic of Ragusa calls it *antiqua consuetudo*. Taking an oath to Ragusan Doge Gervasius (Krvaš), Miroslav, the Prince of Hum and brother of Stefan Nemanja, promised (17 June 1190) that “he shall administer justice to Ragusans, without fraud, with judges elected by both sides, that shall establish justice, according to the old customs” (*Tamen et nunc ipse iustitiam faciat Raguseis sine fraude electis ex utraque parte iudicibus, ante quorum presentiam iustitia secundum antiquorum mores finiatur*).⁹⁷ In the oath of Great Župan Stefan Nemanjić to the Ragusans (1214–1217), *inter alia* we read: “It is forbidden to the Serb to capture a Vlach [i.e. Ragusan] with no trial. And if someone commits a crime, either from the City [i.e. Dubrovnik] or from my country [i.e. Serbia], judges shall assemble where the law has prescribed, and they shall look for a solution” (И да не емле Срѣблинь Влахъ безъ сѣда; нъ ако се љѹини кривина меѓу градомъ и мовъвъ земловъ, да се стаю сѣдне где є законъ, и да се исправляю; *Et ut Sclavius non apprehendat Raguseum sine iudicio, sed si factum fuerit iniustum inter ciuitatem Ragusii et terram meam ponant se iudices, ubi est consuetudo, et iudicent*).⁹⁸ The court, “according to the old law, from Saint Michael’s Day to Saint George’s Day” (И да є сѣдѣ љ вѣрѣ-менѣхъ по старомъ законѣ вѣдъ Михѣла дѣне до Гюргева дѣне), was mentioned in King Radoslav’s charter presented to the Ragusans (4 February 1234).⁹⁹ Similar wording can be found in the Ragusan oath to Serbian King Stefan Vladislav (September 1234–April 1235): “And according to the old customs from the days of your grandfather and your father, the City [Dubrovnik] and the Land [Serbia] shall have a court for mutual lawsuits, from Saint Michael’s Day to Saint George’s Day” (*Et secundum quod est consuetudo avi vestri et patri vestri civitas cum terra ut haben legem inter se de Sancto Michaelē usque ad Sanctum Georgium*).¹⁰⁰ However, the expression *stanak*, denoting a mixed border-court, was

96 Dinić, “Krstasti groševi”, p. 110. The text refers to the meeting of Andronikos III and Stefan Dušan at *Radobosdion* according to John Cantacuzenos, which has been located at Radovišta (today Radoviš in North Macedonia) more probably in 1336. For more details see S. Ćirković, “O sastancima cara Andronika III i kralja Stefana Dušana” [“On the Meetings of Andronikos III and Stefan Dušan”], *Zrvi* 29/30 (1991), pp. 205–212.

97 Mošin, Ćirković, and Sindik, *Zbornik*, p. 56. Latest edition by I. Ravić, *SSA* 11 (2012), p. 14.

98 Mošin, Ćirković, and Sindik, *Zbornik*, p. 87.

99 *Ibid.*, p. 130.

100 *Ibid.*, p. 136.

mentioned for the first time in the Latin translation (Serbian original does not survive) of King Stefan Uroš's charter presented to the Ragusans (14 August 1243): "And let the *stanak* be between us from Saint Michael's Day to Saint George's Day, as it was in the days of his Majesty, my father with your ancestors and you at the appointed place" (*Et stanec sit inter nos a sancto Michaelae usque ad sanctum Georgium, sicut fuit diebus domini patris mei cum vestris antecessoribus et vobiscum in loco constituto*).¹⁰¹ A few days later the Ragusans confirmed their oath using the same words, only the terms *in loco constituto* were replaced with *in antiquo loco*.¹⁰² The competence of the *stanak*, referring to disputes concerning border lands between the Kingdom of Serbia and the Republic of Dubrovnik, was determined in King Stefan Uroš's treaty with the Ragusans from 23 August 1254:

And considering lands and vineyards that you held until the death of his Majesty, my father, you shall hold them; and vineyards that were planted and lands that were acquired later, let them be reconsidered by the court. And if the court decides that they belong to me the King, let it be; but if it decides that they are yours, let it be. Court sessions shall be from Saint Michael's Day to Saint George's Day, when necessary, in the same place as it was on the days of his majesty, my father. Both judges [Ragusan and Serbian] must swear that they shall try righteously.

ИАКО ЗЕМЪЛЮ И ВИНОВАРЪДЪ ЧТО СТЕ ДРЪЖАЛИ ДО УМРЪТНА ГОСПОДИНА МИ УТЦА, ДА СИ Ю ДРЪЖИТЕ; А ПОТОЛА ЧТО СЕ НАИДЕ ПОСАГЕНО ВИНОВАРАМИ, ИЛИ ЗЕМЪЛЕ ПРИЕМЪШЕ, ДА СЕ СЪДОМ ИСПРАВИ. ДА ЧТО СЪДЪ УКАЖЕ КРАЛЕВСТВЪ МИ, БЪДИ КРАЛЕВСТВЪ МИ, А ЧТО ВАМ ПОКАЖЕ—ТО ВАМ. СЪДЪ ДА СТАЕ УТ МИХОНЛА ДЪНЕ ДО ГЮРЬГЕВА ДЪНЕ, КЪДИ ВИ БЪДЕ ТРЪБЪ. И СЪДЪ ДА СТАЕ ГДЪ Е И ПРЪГЕ СТОИАЛЪ У ДЪНИ ГОСПОДИНА МИ УТЦА. СЪДЪЦЕ УБОЕ ДА СЕ КЛЫНЪ, ИАКО ДА ПРАВО СЪДЪ.¹⁰³

In the oath of Ragusan Doge Andrea Dauro to Serbian King Stefan Uroš I (August 1254), the *stanak* was called the "common court" (УБЫКЫ СЪДЪ): "And if the common court condemns anyone of our citizens, we shall deliver his property" (ИАКЕ КОГА ГРАГЪНИНА УСЪДИ УБЫКЫ СЪДЪ ДА ПОДАЕМО ЕГОВЪ ДОБЫТЪКЪ).¹⁰⁴ So, it is clear that *stanak* was a border-court which had sessions in fixed places

101 Ibid., p. 174.

102 Ibid., p. 176.

103 Ibid., p. 212.

104 Ibid., p. 216.

and in the period between autumn (Saint Michael's Day, celebrated by Orthodox Slavs on 8[Julian]/21[Gregorian] November) and spring (Saint George's Day, 23 April[Julian]/6 May[Gregorian]). *Stanak* was explicitly mentioned in later charters until the reign of Tsar Uroš (1355–1371).

On the functioning of the *stanak* we have information in book III of the Statute of Dubrovnik: Chapter LI, "On customs between Ragusans and subjects of the Principality of Hum" (*De consuetudinibus inter Raguseos et homines comitatus Chelmi*); Chapter LII, "On customs between Ragusans and people from Bosnia" (*De consuetudinibus inter Raguseos et homines Bossine*); Chapter LIII, "On customs between Ragusans and people from Raška" (*De consuetudinibus inter Raguseos et homines Rassie*); and Chapter LIV, "On customs between Ragusans and subjects of Zeta" (*De consuetudinibus inter Raguseos et illos de Genta*).¹⁰⁵ It is remarkable that the Statute does not speak on Serbian land, but on their historical constituent parts (Raška, Hum, Zeta). According to Teodor Taranovski it is proof for an old, pre-Nemanjić origin of the institution of *stanak*.¹⁰⁶ The places of meeting were different, as well, but always in the surroundings of Dubrovnik: for the people from Hum in the fixed place near Saint Stephen in Zaton, outside (*ad locum constitutum ad Sanctum Stefanum in Malfo de foris*).¹⁰⁷ The *stanak* with the people from Raška was in Šumet, on the place called Pržinata, near the church of Saint Tryphon or in Kresta, close to the church of Saint Michael (*in Ioncheto, in loco qui dicitur Arena prope ecclesiam S. Triphoni vel ad Crestam prope ecclesiam S. Michaelis*).¹⁰⁸ Later on, this place was called Železna Ploča (literally "Iron Plate"). Courts with the subjects of Zeta were in session in Mlini, close to the church of Saint Hylarion (*ad Malina prope ecclesiam sanct Hylacrioni*).¹⁰⁹

Among the quoted chapters the most detailed is the one describing the *stanak* with the subjects of the Principality of Hum. However, in the chapters dedicated to the people from Raška (i.e. Serbia) and Zeta it was written that "this *stanak* must be held according to the provisions and regulations that are valid for the *stanak* of Hum" (*Et hoc stanicum debet fieri secundum ordinem et formam quod fit stanicum de Chelmo in omnibus*).¹¹⁰

The Statute differentiates between two types of court: "Grand" or "Plenary Stanak" (*stanicum magnum vel plenarium*) and "Petty" or "Proper Stanak" (*stan-*

105 *Statut grada Dubrovnika*, pp. 226–231.

106 Taranovski, *Istorija*, vol. IV, p. 150.

107 *Statut grada Dubrovnika*, p. 226.

108 *Ibid.*, p. 230.

109 *Ibid.*, p. 230.

110 *Ibid.*, p. 230.

icum parvum vel proprium). The “Grand Stanak” was convoked by the authorities of both countries for the purpose of resolving political matters and eliminating controversies. The “Petty Stanak” arose from an agreement of private persons (individuals), one from Serbia, the other from Dubrovnik, to administer their mutual disputes. Parties to the *stanicum magnum* were usually heads of the States, but “The King of Raška [i.e. Serbia] was not committed to come to the *stanak* in person, except if he wanted that, but he was obliged to send his representative; the Ragusan Doge had to do the same” (*Et rex Rasie personaliter non tenetur venire ad stanicum nisi fuerit de sua voluntate, sed ipse tenetur mittere, et similiter facit d. comes Ragusii*).¹¹¹ Governments of both States appointed judges called *stani* (*judices sive stani*), in equal number for each party (*et sint tot iudices ex una parte quot ex alia*).¹¹² The number of judges was not fixed—two, four, even twelve and maybe more—but the number had to always be paired. Parties to the “Petty Stanak” elected judges themselves.

First of all, disputes where the plaintiff was the Prince of Hum (i.e. King of Serbia) were to be resolved, and then those where the plaintiff was the Doge and the Republic of Dubrovnik (*Et sit primum placitum comitis de Chelmo, secundum debet esse comitis et Comunis Ragusii*).¹¹³ If they had no litigations, then it was decided by lot (*per tessiram*) whose lawsuit would be first, and then one by one all the remaining cases. In the functioning of the *stanak*, a decisive role was played by oaths and guarantors, persons who promised to answer for a debt, default or miscarriage of another. A suit was lost by any party that was summoned but did not appear in court without any valid reason. That party was considered as culpable (*Et quecumque pars non venerit ad stanicum constitutum, et vocata fuerit et non habuerit iustum impedimentum clare factum, videlicet impedimentum Dei et contradicionem domini terreni, et iudicata fuerit, perdiderit placitum et erit torta*).¹¹⁴ Each party’s authorities were obliged to hand over the sentenced person, or to force him to pay the sentenced amount.

King Milutin abrogated the “Petty Stanak” and replaced it with a special mixed-court, but in the territory of Serbia, not in the border land. This novelty was mentioned for the first time in the draft, written in Latin, of his charter issued to the Ragusans on November 1301: *Item si aliquis Raguseus habuerit aliquam questionem cum aliquo Sclauo quod illa questio non possit deffiniri per curiam regalem nisi per unum Raguseum et unum Sclauum iudices in ipsa*

¹¹¹ Ibid., p. 230.

¹¹² Ibid., p. 228.

¹¹³ Ibid., p. 226.

¹¹⁴ Ibid., p. 228.

questione.¹¹⁵ In the charter that followed the draft, which was written in Old Serbian (14 September 1302), we read: “And if any lawsuit happens between a Serb and a Ragusan, justice shall be administered before a Serbian judge and before a Ragusan. And what they decided, let it be” (И акє сє вєрѣтє кон дльгъ междѹ срьб’линомъ сь Дѹбровѹчанином, да да имь є сѹд прѣдъ сѹдимм срьбьським и прѣдъ єднѣмъ Дѹбрѹв’чанином. И цю сѹдита този да є сврьшєно).¹¹⁶ The same provision was confirmed by Milutin’s son and successor Stefan Uroš III Dečanski (27 December 1321), in his charter presented to the Ragusans: “for any plea, let them [Serbs and Ragusans] appear in court, where one judge is Serb and the other Ragusan. But, if a [Ragusan] has a litigation with a Saxon, let it be one [judge] Saxon and the other Ragusan, to administer justice” (ѹ комь годѣ дльгѹ, лишє сѹдомъ да сє ицѹ, да є єд’нь срьбелинь а дрѹги Дѹбровѹчанинь. Акє бѹдє пра сь Сасиномъ да бѹдє єднь Сасинь а дрѹги Дѹбровѹчанинь, прѣд тѣми да сє расправлаю).¹¹⁷ However, for crimes considering high treason, murder, slaves and a horse-thief, Ragusans had to appear before the King’s Court (А прѣдъ кралєвство ми да идѹ за невѣрѹ, за враждѹ, за ѹєлаѹадина за конь: ѹ томь да є сѹдъ Дѹбровѹчанинѹ прѣд краллєвством ми).¹¹⁸

So, the mixed-court was composed of a Serbian official (“Serbian judge”) and a Ragusan, obviously from any of the prominent members of the Ragusan colony in Serbia. This court was subordinated to the Serbian authorities, it functioned on Serbian territory, and this was its crucial difference from the *stanak*.¹¹⁹

During the reign of Tsar Dušan, lawsuits between Serbs and Ragusans were under the jurisdiction of Serbian state-officials. This is clear from a passage of the Dušan’s treaty with Dubrovnik (20 September 1349), where we read: “And Ragusan merchants, who happened to be in the Tsar’s and King’s market-towns, and who have to appear in court, let them litigate before the customs officer and headman, or before the kephale of the actual town, according to the law of my Imperial parent and progenitor” (И ѡцє, трѣговци Дѹбровчанѣ кои сє вєрѣтаю по трѣговєхѹ царьства ми и краллєвєхѹ, цю им сє слѹча кои лѡво сѹдѹ,

115 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 346–347.

116 Ibid., pp. 345–346.

117 Edited by S. Ćirković, *SSA* 5 (2006), p. 44.

118 Mošin, Ćirković, and Sindik, *Zbornik*, p. 346.

119 On *stanak* see V. Bogišić, “Stanak po dubrovačkom zakonu od 1272 godine” [“*Stanak* according to the Ragusan Code of the Year 1272”], *Glasnik SUD* 44 (1877), pp. 197–231. This paper was also published in German, “Stanak, Stanicum nach dem Rechtsstatute der Republik Ragusa vom Jahre 1272”, *ASPh* 2 (1877), pp. 570–593. Also see Taranovski, *Istorija*, vol. IV, pp. 149–154, and S. Ćirković, “Stanak”, in *LSSV*, pp. 696–698.

да се сѣде предѣ царинникомъ и к'неземь, а или предѣ кнепалникомъ, кои бѣдѣ градѣ, тогази закономъ родителѣа и прародителѣа царьства ми).¹²⁰ However, for bloodshed, disputes arising over land, enticing and helping a villager to flee, slaves and horse-thief, Ragusans must appear in the Tsar's court (И за снѣзи да гредѣ предѣ царьство ми на сѣдѣ: за кръвь, и за зем'лю, и за проводѣ, и за човека, и за сводѣ, а за ино ни за цю).¹²¹

In contrast to the "Petty Stanak", the "Grand Stanak" was never abolished and was convoked for every dispute that the Serbian State and the Republic of Dubrovnik had. In the abovementioned treaty of Tsar Dušan with Dubrovnik, we can read:

And for my Imperial lands that you [Ragusans] have taken, over the boundary that existed in the days of my Imperial parent and progenitor, the Sainted King, and vineyards that you have planted over the boundary, you must return all to me. And for trials and any justification, as it existed in the days of my Imperial parent and progenitor, let it be also at the present time and in years to come. And for all [pleas], the court shall be in session on the Iron Plate, as it used to be.

И цю бѣдѣ прѣзели землю царьства ми и прѣз мегю коѣа кѣтъ била мегѣа ѣ родителѣа и прародителѣа царьства ми, свѣтаго краляа, ако бѣдѣ и винограда по нѣи и насадили прѣз мегю в'се да ми повратѣ. И за сѣдовѣ и всако вправ'даниѣ, како сѣ имали ѣ родителѣа и прародителѣа царьства ми, такози и вѣд дньсѣ напредѣ да имаю, и за в'се да кѣтъ сѣдѣ на Желѣз-нои плочи, како кѣтъ и вѣд прѣжде било.¹²²

This provision was confirmed by the same wording in Tsar Uroš's treaty with Dubrovnik (25 April 1357).¹²³

However, Prince Lazar in his treaty with Dubrovnik (9 January 1387) re-established the old mixed-court for lawsuits between Serbs and Ragusans, as existed in the epoch of King Milutin—half the judges were Serbs, half Ragusans (И ако се ѣчини коѣа пра мегѣ Дѣбровчани и Сръблѣи, да се постави половина сѣди Дѣбровничкихѣ, а половина Сръбьль, да се прѣд ними прѣѣ). The restoring of the mixed-court was followed by the setting aside of Serbian courts' jurisdiction for mutual litigations between Serbs and Ragusans: "And a Serb is not to summon

120 Edited by D. Ječmenica, *SSA 11* (2012), p. 39.

121 Ibid.

122 Ibid., p. 40.

123 Edited by M.A. Černova, *SSA 12* (2013), p. 83.

a Ragusan in any court, only before judges [of mixed court] ... and [Ragusans] are not to make efforts [appearing] in front of my lordship or my kephale" (И да не позива Срѣбинъ Дѣбровчанина на сѣдѣ никамо тѣкмо прѣдѣ внѣзи сѣдѣ ... а да се не мѣче прѣдѣ господство ми ни прѣдѣ кефалию).¹²⁴

5 Sovereign's (King's, Tsar's) Court

5.1 "King's" or "Tsar's Debts" (*Pleas of the Crown*)

A special estate-court established to administer justice exclusively to the nobleman class did not exist in mediaeval Serbia, as it existed in some other European feudal States (Hungary, Poland, Bohemia). The Sovereign's (King's) Court tried the entire noblemen class. Besides nobles, the King's Court administered justice to all dwellers in the ruler's domains and towns, and to villagers for all pleas which were in the sphere of the King's Court (*casus regales*, *cas royaux*, pleas of the crown), i.e. which were exempt from the jurisdiction of feudal courts (*curia baronis*). We do not dispose with a unique list of pleas of the crown, in Serbia called "King's" or "Tsar's debts", but examining the sources it could be concluded that pleas of the crown were: 1) high treason (*izdaja*); 2) enticing and helping a villager to flee (*provod* or *prejem ljudski*, in some documents called *čeljadin* = human being or *čovek* = man); 3) homicide (*vražda*); 4) bloodshed (*krv*); 5) horse-theft (*konj* or *svod konjski*); 6) disputes arising over land (*zemlja* = land); 7) professional thieves and brigands (*tat* and *gusar*). Article 192 of Dušan's Law Code mentions "rape of a noblewoman" (*razboj vladičanski*) as one of the "Tsar's debts", but as this article occurs only in the late Rakovac copy, it is disputable whether it is reliable.

The surviving legal sources inform us only on the disputes arising over land that were tried by the King himself or by some of the high State-officials or judges appointed by the King. We shall quote several cases:

First, King Stefan Uroš III Dečanski, in the chrysobull presented to the Episcopacy of Prizren (April 1326), says that Položani had taken fields had always been the property of the church, and "my royal parent with Bishop Damian and Bishop Elijah found that out, and he seized [that fields] from Žegar and he set on fire his houses, and then my Majesty sent Despot Dragoslav with Bishop Arsenius to locate [that fields], and let the holy church hold those fields as it used to be at first" (И оузеи кесоу были Положани, и изнашьаь кє родитель

¹²⁴ Edited by A. Mladenović, *Povelje kneza Lazara*, p. 192.

кѡтальевѣства ми съ епископомъ Даміаномъ и съ епископомъ Илиѡмъ, и ѡтѣлъ ѡт Жегра, и коуце моу попалилъ; и пакъ посла кралеѣство ми деспота Драго-слава съ епископомъ Арсениемъ да ихъ изнадю, да си не има света цркви како не испрѣва было).¹²⁵

King Stefan Uroš's III Dečanski chrysobull issued to the monastery of Hilandar (6 September 1327) describes a dispute that appeared in the King's Court between the Hilandar hegoumenos and the brethren of the monastery, versus the King's noblemen Demetrios and Borislav, referring to a conflict of rights on lands in the village of Kosorića:

My Majesty the King writes and orders to be made known to everybody. Kyr Gervasius, reverend hegoumenos of the Most Holy Mother of God Hilandar monastery on Mount Athos, appeared in my Royal Court with the sons of land official Hardomil—Demetrios and Borislav. The hegoumenos said: "Neighbours, I am asking you, noblemen of his Majesty the King, why do you abuse by force the land and hill [belonging] to Hilandar, between Kosorići and Hilandar's villages?" Demetrios said: "We know nothing, the land and hill [belongs] to Kosorići." And the King ordered that they bring 12 elders from the county, trustworthy men, to come to the boundary, and to indicate, making a sworn statement, where is the boundary of Kosoriće and where is Hilandar's [estate]. And the King sent the assistant¹²⁶ Gradislav Vojšić. And the elders came on boundary and they took an oath to the assistant like this: you shall be cursed from the Lord your God and the Most Pure Mother of God, you and your homes and your children, if you shall commit perjury referring the eternal boundary of Hilandar's land and hill with Kosoriće. And they made a sworn statement and they demonstrated a boundary ... And those are the names of the elders ... After fixing a boundary, the hegoumenos appeared with the assistant and Demetrios and Borislav before me the King, and the hegoumenos with the brethren of the monastery, by their own free will, left to Demetrios and his brother a piece of land called Českovo, to use it as long as the monastery's community wants, but when the monastery requests [this piece of land] let [the monastery] have its own, with no dispute and litigation, and nobody may disturb that, small or great, as it was written.

125 Edited by S. Mišić, *SSA* 8 (2009), pp. 16–17.

126 The Serbian word is *pristav*, etymologically analogous to "assistant". He was the executive official of the court. On his duties, see below.

Пише и повелѣва кралевство ми въ свѣдѣнїе всакомоу, како приде кралевствоу ми в'сечьстни игоум'нь Светыне Горї Аѳона, прѣсветыне Богородице хиландар'скїе куры Гервасїе на соуды прѣды кралевство ми, съ сынови теп'чїе Хар'домила, Д'митромъ и Борїславомъ. Говоре игоум'нь: оупрашам ви сѣсѣди властеле господина крала, како притицете землю и брьдо хиландар'ско посиленїе мегю Косорїки и сели хилан'дар'скими. Говоре Дмитрь, мы не знамо ница, земля ꙗе и брьдо косорїкско. И тако и соуди кралевство ми да поведѣ. вї. старїнїкъ жоуплань, достовѣрнїхъ чловѣкъ, да се заклѣноу страшнїмъ заклѣтїемъ, дошѣдше на мегю да Ѹкажоу коудѣ ꙗе мегя косорїксемъ, коудѣ ли хилан'дар'ско. И посла кралевство ми Градїслава Воишїка пристава. И придоше старїнци на мегю, и закле ихъ пристава, тако да нѣсте проклетїи вѣ Господа Бога и прѣчїстїе матеръ божїе, и ваши домове и дѣт'ца ваша некетѣ крїво, кѣдѣ ꙗе мегя вѣчна хїлан'дар'ске землѣ, и брьда и Косорїксемъ. И вни се заклеше страшнїмъ заклѣтїемъ в'си въ єдино и Ѹказаше мегю ... А се имена старїникомъ ... И Ѹтесав'ше мегю, приде игоум'нь съ приставомъ, и Дмитрь и Борїславъ прѣды кралевство ми, и хотѣнїемъ своимъ игоум'нь и стар'ци вставише Дмитрь з братомъ вѣ свое землѣ комать Ческово, да се похранѣ доклѣ ꙗе хотѣнїе звороу хилан'дар'скомоу и кѣди оузице манастирь да си има свое, ни сѣда ни пре, и никїмъ забав'но в'се мало голѣмо како пише мегя.

According to the pronounced boundary between the monastery's land and the village of Kosoriće and voluntary agreement between monastery and its neighbours, the noblemen Demetrios and Borislav, King Stefan Uroš Dečanski delivered the sentence that the monastery of Hilandar would acquire that land and hold it for eternity, and that nobody could deprive the church from that land (Сего ради записа и оутвърди кралевство ми знаменїемъ и словомъ кралевства ми въ всако оутвърждениє и свободу, тако да си има света црькви прѣчїстїе Богородице хиландар'скїе сїе в'се выше писано въ вѣки невѣтѣмлено никїмъ).¹²⁷

The Dečani chrysobull (1330) mentions another dispute that arose over land and that appeared in King's Court: "My Majesty the King sent judges Bogdan and Parabko to fix the boundaries between Srednje Selo and Kumanovo, and 24 witnesses with them, and they fixed the boundaries ... And according to the testimony of witnesses, My Majesty ordered that the land has to be divided in two parts, and the division was done by judge Parabko" (Аво како посла кралевство ми соудию Богдана и Парав'ка оутесати мегю Срѣд'нїемоу селюу и

¹²⁷ Edited by S. Mišić, SSA 3 (2004), pp. 5–7.

Коумановоу, а с' ними .ка. свѣдоке, и оутѣсаше мегіе ... а тоузи зем'лю цю присвѣ-
доковаше свѣдоци и рече кралеѣв'ство ми на поли раздѣлити и раздѣли Парав'ко
соудниа).¹²⁸

Emperor Dušan's charter to the monastery of Hilandar (15 November 1349–1353) mentions the Tsar's Court solving litigation over land that the monastery brought against some noblemen, lesser lords and Vlach's hamlets. The document was created in order to confirm that the properties in Strumitsa area belonged to the monastery of Hilandar, since hegoumenos John of Hilandar with the chosen elders (куръ Іванъ и съ чьстѣнными и избранними старци) had complained to the Tsar that those properties had been jeopardized by noblemen, lesser lords and Vlach's hamlets from that area (и говорише царьствѣ ми како ихъ вбиде властеле и властеличики и катѣни влахъ царьства ми на плавинахъ и забелехъ). The document precisely specifies the boundaries of the Hilandar estate which the Tsar's lesser lord Branilo (властеличикіа царьства ми Бранила) was supposed to determine with 12 other elders. Besides that, the right to collect *inomistro according to the law* (И да си љзима иномистро по законѣ) had been given to the Hilandar monks.¹²⁹

The Serbian legal sources testify that the Tsar's Court was sometimes in session even during a gathering of State Councils. For example, Tsar Dušan's charter to the monastery of Hilandar (2 May 1355) is in the form of a judgment from the Council in Krupišta, which was held in 1355. Hilandar's hegoumenos Dorotheus presented the appeal to the determination of boundaries of pastures Kruščica and Ponorac, and complained to local noblemen who relocated to the market-town Kninac:

When my Imperial Majesty convoked the Council in Krupišta, in the presence of Right Reverend Patriarch Kyr Sabba, and Metropolitans, Bishops and hegoumenos, and all eremites of Holy Mountain Athos, and all Serbian, Greek and Maritime noblemen, reverend hegoumenos of the Holy Virgin Hilandar monastery Kyr Dorotheus and the elder of the Kareia pyrgos Enophrios and other elders came here, exposing the chrysobulls of My Imperial progenitor, the Sainted King. And they spoke, here in the Council, how members of a supply unit¹³⁰ and stablemen settled on the top of the church enclosure Ponorac and Kruščica, where the monastery's sheep and mares graze. And they mentioned to My Majesty that Podgoričane do

¹²⁸ Edited by Ivić and Grković, p. 98.

¹²⁹ Edited by I. Komatina, *SSA* 13 (2014), pp. 209–210.

¹³⁰ The Serbian word is *stanici*. On the meaning of that word see section 2, "Court-Baron".

not give half of the customs that they have from the village of Kamenitsa in Zeta and from the hunting-ground on the [River] Morača. And they mentioned how noblemen and villagers moved on the other place market-town Kninac, that they have in the *metochia*¹³¹ of Kruševo, and how they do not give customs from wine and other monastery's labour services ... And My Majesty sent judge Parabko to release the church enclosures Ponorac, Kruščicu and Labičevo from members of a supply unit and stablemen. And they had to find in Orahovac 12 elders, good men, to fix the boundary of Ponorac, Kruščica and Labičevo, as it was written in the chrysobull of My Imperiar progenitor, the Sainted King. And nobody shall graze cattle in that enclosure, neither great, nor small lord, neither Vlach, nor Albanian.

СЪБРАВ'ШОУ ЦАРЬСТВОУ МИ СЪБОРЪ НА КРОУПИЦІИХЪ, СЪ ПРѢВЪСВѢЩЕННИМЪ ПАТРІАРХОМЪ КВР Савою, и съ МИТРОПОЛИТИ, и съ ЕПИСКОПЫ, и съ ИГОУМЕНЫ и съ ВСѢМИ ПОУСТИННОЖИТЕЛИ СВѢТЫНЕ ГОРИ АѦОНА, и съ ВСѢМИ ВЛАСТЕЛИ СРЪБ'СКЫИМИ и ГРЪЧЬСКИМИ и ПОМОР'СКЫМИ, ТОУ ИЗЫДЕ ВСЕЧЪСТНЫ ИГОУМЕНЪ СВѢТЫНЕ БОГОРОДИЦЕ ХИЛАН'ДАР'СКЫНЕ КВРЪ ДОРОЖИИ и СТАР'ЦЪ ПИРГА КАРЕНСКАГО ЕНОФРИЕ, и ИНИ СТАР'ЦИ, и ИЗНЕСОШЕ ХРИСОВОУЛЕ ПРАРОДИТЕЛЯ ЦАРЬСТВА МИ СВЕТАГО КРАЛЯ. И ГОВОРИШЕ ТОУ НА СЪБОРОУ ЦАРЬСТВОУ МИ КАКО ИМЪ СОУ СѢЛЫ СТАН'НИЦИ и КОНЮСИ НА ВРЪХЪ ЗАВЕЛЕ ЦРЬКОВНОГА, НА ПОНОР'ЦОУ и НА КРОУШ'ЧИЦИ, ГДЕ ПАСОУ МАНАСТИРСКЕ ВЪЩЕ и КОВИЛЪ. И ОУ ЗЕТЕ ЦЮ ИМАЮ СЕЛО ПОЛОВИНА КАМЕНИЦЪ, и НА МОРАЧЕ ПОЛОВИНА ЛОВИЦА, КАКО ИМЪ ТЕЗИ ЦАРИНЕ ПОДГОРИЧАНЕ НЕ ДАВАЮ. И ЦЮ ИМАЮ У КРОУШЕВ'СКОИ МЕТОХІЕ ТРЪГЪ КНИНЫЦЪ, КАКО ИМЪ ГА ВЛАСТЕЛЕ и МЕТОХІЦИ ПРѢСЕЛѦВАЮ НА ДРУГАА МѢСТА, и ЦАРИНЕ ИМЪ ВДЪ ВИНА НЕ ДАВАЮ, и ВТЪ ДРОУЗЕХЪ РАБОТАХЪ МАНАСТИР'СКИХЪ ВЪСПОМЕНОУШЕ ЦАРЬСТВОУ МИ ... И ПОСЛА ЦАРЬСТВО МИ СОУДИЮ ПАРАВЬКА ДА ИМЪ ВСВОБОДИ ВДЪ СТАН'НЫКЪ и ВДЪ КОНЮХЪ ЗАВЕЛЬ ЦРЬКОВНИ, ПОНОР'ЦЪ, и КРОУШ'ЧИЦОУ и ЛАБИКЕВО, ДА НАГЮ ВДЪ ОРАХОВ'ЦА ЁІ СТАРЬЦЪ ДОБРИХЪ ЧЛОВѢКЪ, КОУДЕ Ё МЕГІА ПОНОР'ЦЪ и КРОУШ'ЧИЦИ и ЛАБИКЕВОУ ДА УТѢШОУ, КОУДЕ ПИШЕ ХРИСОВОУЛЬ ПРАРОДИТЕЛЯ ЦАРЬСТВА МИ, СВЕТАГО КРАЛЯ. ДА НЕ ПАСЕ ТЕИ ЗАВЕЛЬ НИКОИ ВЛАСТЕЛИНЪ, НИ МАЛЪ и ВЕЛИКЪ, НИ ВЛАХЪ, НИ АРБАНАСИНЪ).¹³²

At the same Council in Krupišta Tsar Dušan passed judgment on a very complicated lawsuit referring to the land between Hilandar monastery and the

¹³¹ *Metochia* is a Greek word (μετόχια) meaning “monastic estate”.

¹³² Edited by M. Koprivica, SSA 15 (2016), pp. 111–112.

monastery of Saint Archangels. On that occasion he issued three charters (1355, two on 17 May and one on 2 July).

Another of Tsar Dušan's charters to the monastery of Hilandar, issued in a Council (8 June 1355, maybe also in Krupišta),¹³³ solved the dispute between the monastery of Hilandar, represented by hegoumenos Dorotheus, and imperial guards (вѣдци) over the village Karbinci. The Tsar delivered the verdict that only one part of the village was to be granted to the monastery, while the rest was to remain in the possession of the imperial guards. Hilandar monastery was granted the smaller part of the village Karbinci. Demarcation between these two parts of the village was conducted by David Mihojević, *kephale* of the city of Štip (Има хѣбниѣ и повелѣва царствѣ ми да се вѣдомо всакомѣ како придѣ игѣмень в'сечѣстѣни свѣтогорски Богородице хиландарске Дорофеи и съ старци и говори царствѣ ми ѡ селѣ зем'ли Кар'бин'чкои како ѣ има црьковъ ѡ хрисовѣли а съги ѣ не дрѣже. И съпрѣше се зъ быци царства ми предѣ мномы цю сѣ на тои зи зем'ли Кар'бин'чкои и царство ми въ то врѣме не вбрѣте нигдѣ дати быцемъ да се прѣселѣ и послахъ кѣфалию цип'скога Давида Михојевикиа игѣмена и старце и тези быце да с краѣмъ вѣдѣшъ црькви и ѡтъкмѣ. И пришь Давидъ сповѣдъ царствѣ ми како ѣсть мегю ними ѡтък'милъ и вѣдѣсали землю кѣдѣ ми сповѣдъ Давидъ).¹³⁴

In mediaeval society for many centuries there existed an old view that every subject of the State may present a lawsuit to the sovereign, because the King was considered as the chief defender of justice. In the course of time it became impossible in practice, especially with the enlargement of the State territory. Dušan's Law Code explicitly prohibits direct communication with the Tsar's court in two articles. First, article 175 orders: "But let no man summon to trial in my Imperial Court" (а никто да се не позива на дворъ царства ми). Article 182 prescribes: "No man may bring an action in my Imperial Court" (вѣсакъ чловѣкъ да нѣст вол'нѣ позвати оу дворъ царства ми). However, the only exception was provided by article 72: "And if any unfree person come to the Tsar's Court, let justice be done, to each, save only to the slave of a lord" (И кто неволнѣ доидѣ на дворъ царевъ, да се всакомѣ оучини правда, ѡсвѣнъ отрока властевскога).¹³⁵

133 See M. Živojinović, "Akti sabora u Krupishtima" ["Acts of the Council in Krupišta"], *Glas SANU, Odeljenje istorijskih nauka* 16 (2012), pp. 99–112.

134 Edited by V. Petrović, *SSA* 14 (2015), pp. 108–109.

135 Burr, "The Code of Stephan Dušan", pp. 534, 535, 212; Novaković, *Zakonik*, pp. 137, 141, 58; *Zakonik cara Stefana Dušana*, vol. III, pp. 150, 152, 118.

5.2 “Palace Court”

Beside the King’s (Tsar’s) Court, where the sovereign presided himself, Dušan’s Law Code mentions the so-called “Palace Court”, i.e. a Court at the Imperial Palace, as a separate institution. Article 175 speaks on “a judge in my Imperial Court” (Кои соуѡѡа кестъ оу дворе царства ми) and article 177 on “my court judges” (прѣд соуѡиѡмъ двор’скимъ). The origin of the “Palace Court” and “court judges” should be sought in the “King’s Court officials” (*vladalci dvora kraljeva*), who could replace the King in trials.¹³⁶

The “court judge” was the supreme judge of the Empire (like *iudex curiae* in Hungary) and its existence is confirmed by Pope Innocent’s VI¹³⁷ letter to Emperor Dušan (29 June 1354), referring to the Tsar’s deputation which came to the Papal Court in Avignon (*Stefano regi Rasciae super receptione litterarum et nuntiarum suorum, ut papa viror in fide catholica plenius eruditos illuc mitat*). One of the representatives was “your supreme judge Božidar” (*Bosidaius Iudex tuus generalis*).¹³⁸ The Serbian sources mention judge Parabko, who was present at the “Palace Court” for 25 years. Eighty-one years later (1435), during the reign of Despot Đurađ Branković, we have information on “the great judge of his majesty Despot” (*il grande zudesse del signor despoto*).¹³⁹

According to the provisions of Dušan’s Law Code, the “court judge” had jurisdiction over three types of cases. First, the “court judge” presided over all crimes committed at the Imperial Court (article 175): “Whosoever be judge in my Imperial Court, let him judge such crimes as occur there” (Кои соуѡѡа кестъ оу дворе царства ми, и оучини се зло тѣм’зи да се соуѡѡи). Second, the “court judge” was competent for all litigations of State-officials residing at the Imperial Palace (article 177): “Lords who dwell at my court, if they are sued, shall be tried by my court judge, and no one else shall try these cases” (Кои власт’бле стоје оу кѡкы царства ми вѣсегда, ако их при да их при прѣд соуѡиѡмъ двор’скимъ, а инъ никто да имъ не сѡѡди). Third, the “court judge” tried all litigants who intentionally came to the Imperial Court to seek justice (article 175): “The court judge shall also hear cases where litigants came intentionally¹⁴⁰

136 For example see King Dragutin’s charter to the monastery of Hilandar (1276–1281), mentioned above. Mošin, Ćirković, and Sindik, *Zbornik*, pp. 268–269.

137 Latin Innocentius VI, 1282 or 1295–1362. Born Étienne Auber, the fifth Avignon Pope, from 18 December 1352 to his death in 1362.

138 A. Theiner, *Vetera Monumenta historica Hungariam, sacram illustrantia, tomus secundus, ab Innocentio P.P. VI usque ad Clementem P.P. VII*, 1352–1526 (Rome 1860), p. 8.

139 Jireček, “Das Gesetzbuch des serbischen Caren Stefan Dušan”, p. 191.

140 The expression *namerom* (intentionally) Stojan Novaković translated as *slučajno*, and Burr following him used the words “happen by chance”. We think that Taranovski, *Istorija*, vol. IV, p. 162, note 1, has it right, saying that *namerom* means “intentionally”.

to my court” (аще ли се вбръѣтета пѣрцѣа намѣромъ, на дворѣ царства ми, да имъ расоуди соудѣа дворскыи).¹⁴¹

5.3 *Tsar's Court as Appellate and Supreme Court*

The Tsar's Court in mediaeval Serbia functioned at the same time as both appellate and supreme court. As a court of appeal, the Tsar's Court decided cases that had been appealed from a “trial court” or court of first instance. As supreme court, the Tsar's Court was the highest court in the land, or the court of last resort. The *Syntagma* of Matheas Blastares contains a definition of the Emperor's Court: “Autocratic and Imperial Court is [the Court] of last record and there is no appeal of its decisions; it examines its own sentences, as the God-Seer and Law-Giver Moses said: ‘Who tries again, tries on its own’” (Τὸ αὐτοκρατορικὸν καὶ βασιλικὸν κριτήριον, ἐκκλητῶ οὐχ ὑπόκειται, οὐδὲ ἀναψηλαφᾶται ὑφ’ ἐτέρου, ἀλλ’ ὑφ’ ἑαυτοῦ ξεῖ ἐπανακρίνεται, καθὰ καὶ ὁ θεόπτης Μωϋσῆς νομοθετῶν, Ἐπανακρινεῖς τὰς κρίσεις σου, διηγόρευσεν, Самодрѣжавѣнои и царскои соудилиште посоужденію къ томоу не подлежитъ, ни же испитоуѣтъ се отъ иного, нь отъ себе прысно посоуждаѣтъ се, іакоже и боговидѣць Моиси законополагаѣ: Посоудиши соуди свое, повелѣъ).¹⁴² So, the *Syntagma* gave a definition of the Tsar's Court, but it does not explain the jurisdiction of the Emperor as supreme judge. Such a deficiency was supplied by several articles of Dušan's Law Code confirming that the Tsar tried in the cases of relation, supplication and maybe appeal.

Relation (Latin *relatio*, Greek ἀναφορά, ὑπόμνησις) was the right of judges to relate to the Tsar when they found any case very difficult. Article 105 prescribes relation only when “imperial charters ... my Code contradicts” (Книге цареве ... тере их потвори законикъ). Therefore he orders the judges in case of such a collision to refer the matter back to him. However, article 181 from the second part of the Code orders: “If there be a big case and they cannot decide it and come to a decision, however great the court may be, let one of the judges come with both the parties before me, the Tsar” (аще се вбръѣте велико дѣло, а не оузмоу расѣдити и расправити кои любо соудъ великъ боудѣтъ, да гредѣwt соудѣи единь съ вбѣма внемаязи пѣрѣцѣма, прѣд царство ми).¹⁴³ The wording of this clause is clear enough: article 181 changed the provision from article 105, and it commands that every complicated case (*veliko delo*, “big case”) must be related to the Emperor.

141 Burr, “The Code of Stephan Dušan”, p. 534; Novaković, *Zakonik*, pp. 137, 138; *Zakonik cara Stefana Dušana*, vol. III, p. 150.

142 Ed. Ralles and Potles, p. 218; ed. Novaković, p. 229.

143 Burr, “The Code of Stephan Dušan”, pp. 517, 535; Novaković, *Zakonik*, pp. 80, 140; *Zakonik cara Stefana Dušana*, vol. III, pp. 128, 152.

Supplication (Latin *supplicatio*, Greek δέησις) was the right of any subject to present a humble request (petition, prayer) to the Tsar, as a source of mercy. Article 72 introduces that right to “any unfree person” (невольный), except only “the otrok of the lord” (ωςβῆν ὀτροκα βλαστειωκοῦα).¹⁴⁴

It seems that appeal (*appellatio*, ἔκκλητος) as a complaint to the Tsar’s Court of an error or injustice committed by a lower tribunal did not exist in mediaeval Serbia. However, a fragment from Tsar Dušan’s chrysobull issued to Hilandar monastery (2 May 1355) orders that if someone from the elders or judges adjudged wrongly, an authorised *kephale* shall try them according to the law.¹⁴⁵ It is clear that the appellate court in this case is the court of the *kephale*, not the Tsar’s.

6 Organization of Justice

6.1 Judges

Until the reign of Tsar Stefan Dušan, judicial power, i.e. the authority vested in courts and judges, was not distinguished from executive power. Local government, city, county, or other governing body at a level smaller than the State could also judge, when it was necessary. King Stefan Dragutin’s chrysobull presented to the monastery of Hilandar (1276–1281) forbids to “sebastos and any other local official to administer justice on monastery estates” (А себастъ ни инъ кои владальць ни оу ѣемъ да не соуде оу сихъ метохыахъ).¹⁴⁶ Documents preserved in the Archives of Dubrovnik testify that justice was administered by the following Serbian local governing officials: *župan* in Konavli (1278),¹⁴⁷ headman (*knez*) in Hum (1303–1305), *sebastos* in Prizren (1312), *župan* in Dračevitsa (1319),¹⁴⁸ *kephale* (*castellanus*) in Skopje (1333).¹⁴⁹

The concept of a judge (Greek κριτής, δικαστής, Latin *iudex*, Serbian *sudija*, соудѣа, соудниа) as a public officer, appointed to preside and to administer the

144 Burr, “The Code of Stephan Dušan”, p. 212; Novaković, *Zakonik*, p. 58; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

145 See section 1.1.

146 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 268–269.

147 Čremošnik, *Istoriski spomenici dubrovačkog arhiva, serija treća, sveska 1*, p. 18, no. 3.

148 In the territory of ex-Yugoslavia there are several places with the name Dračevitsa (Dračevica, Драчевица): a mediaeval county (*župa*) near today’s Herceg Novi and a village near the city of Bar (Montenegro), a village near the municipality of Studeničani and a village in the municipality of Demir Kapija (North Macedonia), and a village on the island Brač (Croatia).

149 Jireček, “Das Gesetzbuch des serbishes Caren Stefan Dušan”, pp. 173–176.

law in a court of justice, penetrated into Serbia under Ragusan and Byzantine influence. As we wrote above, *sudije* (judges) were already mentioned in the treaties with Dubrovnik, in *stanicum* and in mixed-court for lawsuits between Serbs and Ragusans. The same happened on lands conquered from Byzantium: Saint George's charter, for example, mentions "judge great and small" (соудниа вели ни мали) and "judge in the city and in the county" (ни соудниа градоу, ни соудниа жоупски).¹⁵⁰

It seems that King Stefan Uroš Milutin had the intention of separating judicial from executive power. His legislation does not survive, but articles 79, 123, 152 and 153 of Dušan's Law Code mention different aspects of judicial reform, attributed to the "Sainted King". However, King Dušan's chrysobull for Htetovo monastery, issued in 1343 (six years before the first part of the Code) says that "for all litigations that Church villagers have on my King's Court, justice shall be administered either by judges, or by State officials, great or small" (И цю се пре црков'ны людие на двору краљевьства ми или прѣдъ инѣми соудниами, или прѣдъ инѣми владоущими, малыими и великыми).¹⁵¹ This means that the previous practice did not vanish completely; even in the King's Court, governing officials and professional judges tried at the same time.

A general reform of the judicial system in Serbia was finally done during the reign of Tsar Stefan Dušan. His Law Code in numerous articles orders that only judges should exercise judicial power. Article 148 speaks on "judges whom I appoint to judge in the land" (Соудіе коіе царство ми положи по земли соудити), and article 175 commands: "But let no man summon to trial in my Imperial Court, but in the circuit of the judges whom I the Tsar have appointed" (а никто да се не позива на дворъ царства ми мимо власть соудіи, коихъ іестъ поставило царство ми).¹⁵² Trial procedure is always before the judges, as is demonstrated by several articles (see Chapter 27 dedicated to trial procedure). However, Tsar's Dušan's treaty with Dubrovnik, composed only four months after the Code (20 September 1349), orders that justice shall be administered by a customs officer, headman and *kephale*. Judges were not mentioned. Tsar Dušan's charter to Hilandar monastery (2 May 1355) says that the crime of straying (*popaša*) was in the jurisdiction of the *kephale*. The perpetrator shall give 300 rams to the *kephale*, "and there shall be neither trial, nor litigation" (Кто ли се нагнѣ, малъ и великъ, и имѣ пасти посилинемъ, в'саки настоющіи кефаліа да оузмѣтъ на немъ

150 Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

151 Edited by M. Koprivica, *SSA* 13 (2014), p. 150.

152 Burr, "The Code of Stephan Dušan", pp. 526, 534; Novaković, *Zakonik*, pp. 115, 137; *Zakonik cara Stefana Dušana*, vol. III, pp. 140, 150.

Ѣ ВЪНОВЬ ЗА ТОИ, ДА НЕ НИ СОУДА НИ ПРЕ).¹⁵³ Article 194 of the Code starts as follows: “The law of fines for Church people. What is adjudged before the Church or *kephale*” (И ГЛОВОЕ НА ЦРКВНЫХ ЛЮДЕХ ЧТО СЕ СЪДЕ ПРЕДЪ ЦРКВНОМЪ И ПРЕД КЕФАЛЕМЪ).¹⁵⁴ If we accept authenticity of article 194 (surviving only in the late Rakovac manuscript), we can conclude that *kephale*, beside judges, had some judicial competences.

Several articles of the Code testify that the judges were on circuit within a defined district (*oblast*), i.e. there was the existence of so-called circuit courts.¹⁵⁵ In article 110 we read: “Judges who travel about my dominion and in their own province” (СОУДИЕ КОУДАЪ ГРЕДЪ ПО ЗЕМЛИ ЦАРСТВА МИ, И СВОЕИ ВЛАСТИ). There is a similar provision in article 179: “Judges who are travelling within the bound of their circuit” (СОУДИЕ ДА ПРОХОДЕ ПО ЗЕМЛЯХ КОУДАЪ КОМЪ ЕСТЬ ВЛАСТЬ). Article 182 starts with the following wording: “No man who is in the district of the judges may bring an action in my Imperial Court” (КТО ЕСТЬ ОУ ВЛАСТИ КОИХ СОУДИИ, ВЪСАКЪ ЧЛОВѢКЪ ДА НБЕЪТЪ ВОЛНЪ ПОЗВАТИ ОУ ДВОРѢ ЦАРСТВА МИ).¹⁵⁶ We have no information on the size of districts nor what the criteria were for their formation.

The judge of a district presided in the trial court, i.e. the first court to consider litigation. This is clear from final words of articles 175 and 182: “Let each appear before his own judge” (ТЪКЪМО ДА ГРЕДЕ ВЪСАКИ ПРЕД СВОГА СОУДИЮ), and “He may appear only before his own judge in whose district he is, that the matter may be tried according to the law” (ТЪКЪМО ДА ГРЕДЕ ВЪСАКИ ПРЕД СВОГА СОУДИЮ, ОУ ЧИЕНИ БОУДАЪ ВЛАСТИ ДА СЕ РАСОУДИИ ПО ЗАКОНОУ).¹⁵⁷

In the regions conquered from Byzantium, the sources mention two cases when public assemblies of noblemen and villagers (*vlastele i chora*)¹⁵⁸ tried disputes arising over Church land. The first document has already been quoted,¹⁵⁹

153 Edited by M. Koprivica, *SSA* 15 (2016), p. 112.

154 Burr, “The Code of Stephan Dušan”, p. 530; Novaković, *Zakonik*, p. 145; *Zakonik cara Stefana Dušana*, vol. III, p. 276.

155 In some mediaeval jurisdictions, a judge in a circuit court would travel between various geographic regions to hear cases as necessary.

156 Burr, “The Code of Stephan Dušan”, pp. 518, 534, 535; Novaković, *Zakonik*, pp. 84, 139, 141; *Zakonik cara Stefana Dušana*, vol. III, pp. 128, 152.

157 Burr, “The Code of Stephan Dušan”, pp. 534, 535; Novaković, *Zakonik*, pp. 137, 141; *Zakonik cara Stefana Dušana*, vol. III, pp. 150, 152.

158 These assemblies are similar to *mallum* or *ding* of Old German law. *Mallum* was a public national assembly and a court of higher kind in which the more important business of the country was dispatched by the count or earl.

159 Inventory of Htetovo monastery property (1343), already quoted above. Slaveva, Miljković-Pepel, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 289.

and the second from the year 1376, concerning the boundaries in the region of Strumitsa (North Macedonia), says:

In the time of Tsar Stefan [Dušan] brigands stole the Tsar's horses and beat up people, and the Tsar ordered that neighbourhoods pay common indemnity, and all neighbourhoods, noblemen and chora, stepped out and said before Tsar Stefan: 'That land does not belong to us, it belongs to Hilandar, and it was given by caesar Hrelja, and it was written in Tsar Stefan's chrysobull.' And they referred the Tsar to Hilandar's villages, and Hilandar paid for its villages common indemnity and a fine for murder, because the land was the monastery's.

и при цари Стефанѣ знамо: оузе гоуса коніе цареве и люди избише, и посла царь да плати околина приселицоу, и изиде околина вса, властеле и хора, и рекоше прѣд господином царемъ Степаном: 'ничина од насъ тази земята нѣ, тъкмо Хиландарска, и даль ю е Хрелѣа кїесарь Хиландароу, и имаю сию оу хрисовоули цара Степана.' И окривише тъгази прѣд царемъ села Хиландарска, и плати Хиландаръ своими сели тузи приселицоу и вражде, заніе бѣше нїхъ земята.¹⁶⁰

6.2 Judicial Assistants

Judicial assistants are persons who stand by and aid or help judges. Ordinarily this refers to an employee whose duties are to help his superior (judge), to whom he must look for authority to act. The Serbian legal sources testify that execution of court judgments was conferred to *otroci* (slaves), private judge's servants. An *otrok* was a judicial assistant in ecclesiastical courts, but in the State courts as well. The Saint George's charter confirms that "everyone who can try" (И кто се наиде соудивъ) usually "must give an *otrok*" (и втрока давь на нь).¹⁶¹ In the Middle Ages, when the State had a patrimonial character, it was not strange to consider that execution of judgments was the private job (*suum negotium*) of a judge, although judgment was in the sphere of public law. So, the judge's *otrok*, as personal staff who usually worked on the judge's estate, could be sent to execute a judgment pronounced by the court.¹⁶²

The judicial assistants at the Sovereign's (King's, Tsar's) Court were different officials, whose duties were not only judicial, such as *tepčija*, *despot*, *kephale*, *Tsar's nobleman*, or *lesser lord*, because it was customary for the Tsar to send

160 Solovjev, *Odabrani spomenici*, p. 170.

161 Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

162 See Chapter 5, section 3.

even his nobles on official duties. However, the most important among judicial assistants was the so-called *pristav* (приставъ, Latin *pristaldus*, *prestaldus*, *praestaldus*). The word occurs often in Dušan's Law Code, and we shall examine its meaning.

The word *pristav* comes from preposition *pri* = by, at, near, close, and a radical *sta*, from which was derived the verb *stati* = to stand.¹⁶³ So, *pristav* is "someone who stands by", etymologically analogous to "assistant". The *pristav* was the executive official of the Court and was present in the Tsar's Court and in the Judge's Court as well (article 91). According to article 56 litigants "shall be summoned by the *pristav*"¹⁶⁴ (и кто боудѣ позванъ ... с приставомъ),¹⁶⁵ and article 178 says that a duty of the *pristav* is to execute the judge's writ (соудѣ коудѣ посилаю пристава, и книги свое).¹⁶⁶ "In article 91 we find *pristav* placing his knowledge of law and procedure at the disposal of litigants and formally acting as advocate".¹⁶⁷

Of Advocates (Of *Pristav*). When two are at law, if one say: "I have a *pristav* here in the Tsar's Court, or in the Judge's Court", let him produce him. But if he seek him and find him not in the court, let him return forthwith to the court and declare: "I have not found the *pristav*." And if he be at dinner, let him be given time until supper, and if he be at supper, then until the next dinner hour, and if the Tsar or the court have sent that *pristav* upon some service, then he who hath called him is not at fault, and time shall be given him until the *pristav* come, to bring him to the court.

С) пристава. Къди се прѣнта два, ако рече единъ ѿ нѣю имамъ пристава овѣдѣи на дворѣ царевѣ, ако ли на соудѣи ѿ да га даа къда поице ѿнѣ ден и не ѿбрѣще га оу дворѣ тѣ часъ да прѣидѣ на соудѣ, и рече не наидохъ пристава. ако ѣсть на ѿбрѣдѣ да мѣ ѣсть рокъ на вечеѣ. ако ли на вечеѣ да ѣсть на ѿбрѣдѣ да га дасть. ако ли га боудѣ ѿдѣсала царѣ. ако ли соудѣ на работѣ тогазѣи пристава. да нѣсть кривъ онѣи коино га дае, да моу се постави рокъ, да къда ѿнѣи пристава прѣидѣ. да га даа прѣд соудѣи мѣи.¹⁶⁸

¹⁶³ Mažuranić, *Prinosi*, p. 1149.

¹⁶⁴ "Officer" in Burr's translation ("The Code of Stephan Dušan", p. 209), and "clerc" in Krstić's translation (*Zakonik cara Stefana Dušana*, vol. II, p. 244).

¹⁶⁵ Novaković, *Zakonik*, p. 48; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

¹⁶⁶ Novaković, *Zakonik*, p. 138; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

¹⁶⁷ Burr, "The Code of Stephan Dušan", p. 209, comment on article 56.

¹⁶⁸ Burr, "The Code of Stephan Dušan", p. 215; Novaković, *Zakonik*, p. 70; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

Interpretation of article 91 makes it clear that litigants during the trial needed a *pristav*. It was necessary because the *pristav* was a court official who had knowledge of some facts, relevant for a legal act. Some contracts, agreements or deeds of gift could be concluded only in the presence of a *pristav*, and he could testify that a particular legal action was performed. In his testimony there was no doubt at all, and the *pristav*'s testifying was considered as an incontestable evidence. Therefore, trial procedure was postponed until litigants found a *pristav*. If a *pristav* was on official business a new term for its arrival and continuation of judgment was fixed.

The *pristav* was a law officer of so-called *fides publica* (public faith)—particularly dealing with some evidences that were protected by *fides publica*. All evidence given under a pledge of *fides publica* was considered to be faithful until proven otherwise. The burden of proof rested on the plaintiff or on the party who advanced a proposition affirmatively. In Serbo-Croatian legal history, until the end of the 15th century, we find three institutes of “public faith”: 1) *pristav*, 2) public notary, and 3) authentic seals (stamps).¹⁶⁹ However, in a primitive society with a lack of literacy, the force of *fides publica* was attributed to verbal statements of some trustworthy persons, who were invited to assist in the conclusion of some legal acts, and then to confirm by their statements all the relevant facts, which were protected by public faith. In Old Slavonic law, especially by Serbs and Croats, such a trustworthy person was a *pristav*.¹⁷⁰

However, the second part of Dušan's Law Code changed the function of a *pristav*, as is evident from articles 162 and 163.

Of pristavs. Pristavs may go nowhere without writs of the court or without my Imperial writ; but wheresoever the judges send them, they shall write them writs, and no pristav shall take anything save what is written in the writ. And the judges shall keep true copies of the writs which they have given to the pristavs whom they have sent on business through the land. And if a pristav be accused of acting otherwise than the writ prescribes, or if they have tampered with the writ, there shall be a trial for them and they shall appear before the judges, and if it be shown that they have fulfilled what is written in the copies which the judges keep, they are justified. But,

169 M. Kostrenčić, *Fides Publica (javna vera) u pravnoj istoriji Srba i Hrvata do kraja xv veka* [*Fides publica: Public Faith in Legal History of Serbs and Croats until the End of the 15th Century*] (Belgrade 1930), p. 5. Cf. L. Margetić, “O srednjovekovnom pristavu” [“About the Medieval Court Clerk—Pristav”], *Zbornik Pravnog Fakulteta u Zagrebu* 55.2 (2005), pp. 271–324, especially pp. 304–306.

170 Kostrenčić, *Fides Publica*, pp. 5–41.

Trial Procedure

1 Main Characteristics

Serbian mediaeval law did not make a difference between criminal trial procedure (the process of taking a criminal case to court) and civil trial procedure. Both, a civil action and a criminal one, came about when two or more people became involved in a dispute that they were unable to settle by themselves. One of them seeks to have a third party, the court, settle the dispute for them. To do this, a court action, known as litigation (a suit at law) must be brought. In mediaeval Serbia the parties to a lawsuit were called *parci* (пърци) = litigants. The person who brought the suit was called *parčija* (пърчїа, пърьць, plural form *parci*) = the plaintiff. The person against whom the suit was brought was called *otparčija* (отпърчїа) = the defendant.

Trial procedure was the only permitted way to institute criminal proceedings or for settlement of private law demands. Judgment arbitrarily and wilfully without a court was strictly forbidden, especially in commercial relations with the Ragusans. The treaties of Serbian monarchs with Dubrovnik prohibit two types of reprisals of Ragusan merchants: so-called *izam* or *preuzam* and *udava*.

Izam (изъмь) was the self-willed deprivation of property that belonged not to a Ragusan-debtor himself, but to anyone of his fellow-townsmen.¹ It was forbidden already in the oath of Great Župan Stefan Nemanjić to the Ragusans (1214–1217), preserved in Serbian and Latin texts. The Serbian wording *a da ne izma* (а да не изма) was translated into Latin as *et ut non fiant pressalia*.² The same formula was present in four treaties of Bosnian Ban Matej Ninoslav (1232–1235, 1235–1236, 1240, 1249), but only in the Serbian versions.³ Later treaties with Dubrovnik, including the most detailed (King Milutin's of 1302 and Tsar Dušan's of 1349), do not mention provisions referring to prohibition of *izam*. According to King Milutin's letter to his *župan* Tvrtko (c.1285), we can conclude that the principle of *izam*'s interdiction was respected, although the term *izam* was not

1 Đ. Daničić translated the word *izam* as *sumptio, exactio* (*Rječnik iz književnih starina srpskih*, vol. I, p. 404). In some documents from Bosnia, *izam* means "exception" (*exceptio*). See Mažuranić, *Prinosi*, p. 441.

2 Mošin, Ćirković, and Sindik, *Zbornik*, p. 87.

3 Ibid., pp. 140, 142, 154, 182.

mentioned. The King wrote that the Ragusans had captured a boat of a certain Urseta (Кралевства ми любовномъ жѣпанѣ Тврѣтъкъѣ знаши како є љзето љрсетевѣи дрѣво), a subject of the King, and he sent the damaged person to *župan* Tvrtko, ordering him to take from the Ragusans' property what is possible and to deliver that to Urseta (као можь внози љзми на нихъ и подан љрсетевѣи). However, Tvrtko was not allowed to disturb other Ragusan merchants who were circulating in Serbian market-towns (а кои ти гредѣ на тръгъ кралевства ми нѣмаи за не печали).⁴

It seems that at the end of 14th and beginning of the 15th centuries, when central State-power with the arrival of the Turks lost its efficacy, the *izam* (in 14th- and 15th-century sources called *preuzam*) became a reality again in everyday life. After the battle of Nicopolis,⁵ two Ragusans were ransoming "French children" (дѣцѣѣ франѣиашкѣѣ), i.e. French prisoners of war. The Turks started to pursue them, but instead of them they captured a few Ragusans. So, the Ragusans addressed a letter to Prince Stefan Lazarević, on 1 October 1397, asking him to help liberate the innocent Ragusan merchants. In the letter we read: "Your Grace knows that from the time of all Serbian nobles and Sainted and deceased Prince [Lazar] it was written to us that there shall be no *preuzam* to anybody, and that no one shall suffer because of another. And Your Lordship has confirmed all that to us" (А ваша милость зна єрь ѡд всѣхъ господъ срѣвьскѣхъ и ѡд Светопочившега Кнеза єст намъ записанѣо да нѣ прѣљзма никомѣ и да єданъ за дрљгога не пати. И този все намъ є Господство ви потвѣрдило).⁶ Having learnt from that experience, the Ragusans insisted that in the new commercial treaty with Despot Stefan Lazarević the provision of *preuzam*'s interdiction must be inserted (2 December 1405): "Another wish of my Lordship. If any Ragusan is owing to someone, or culpable for anything, let the culpable person be accused, not the other Ragusan to be wanted, only who is in debt or culpable, he has to pay or to suffer; *preuzam* shall not be put into use" (И ѡце хоте Господство ми. ако є кои дѣбровчанинѣ комѣ дльжнь, а или чимѣ кривѣ, да се ице истѣц. а да на инѡм дѣбровчанинѣ нѣ волнь питати, тькмо кто є дльжнь или чимѣ кривѣ онѣ да плаати и пати. и за єднога на дрљгом да

4 Edited by Stojanović, *Stare srpske povelje i pisma*, vol. I, p. 35; Mošin, Ćirković, and Sindik, *Zbornik*, p. 184.

5 The battle of Nicopolis took place on 25 September 1396 and resulted in the rout of an allied army of Hungarian, Croatian, Bulgarian, Wallachian, French, Burgundian and German forces, against the Ottoman Empire. The Ottoman force also included 1500 Serbian heavy cavalry knights under the command of Prince Stefan Lazarević, who was Sultan Bayezid's brother-in-law and vassal since the battle of Kosovo 1389. The battle was a great Ottoman victory.

6 Mladenović, *Povelje i pisma despota Stefana*, p. 24.

не прѣѣзма).⁷ The same wording can be found in the later charters of Đurađ Branković from 1428 and 1445.⁸

A second type of reprisal was so-called *udava*. According to Vladimir Mažuranić the word *udava* comes from verb *udati*, meaning the right of a creditor to imprison his debtor.⁹ Đuro Daničić translated it with the Latin terms *datio* and *comprehensio*.¹⁰ *Udava* was mentioned for the first time in King Milutin's charter presented to the Ragusans (1302), but it is quite probable that it existed many years before, as a provision of customary law. In our document we read: "And no man in Serbian land, great or small, shall imprison [udati u udavu] a Ragusan for a debt" (и ниѣднѣ ѣловѣкъ ѣ срѣпъскои зем'ли малъ же и великъ да не ѣдае ѣ ѣдаве ѣ ѣбров'чанина). In the Latin draft of this treaty, the Serbian wording is translated as: *Item quod nullus homo magnifici domini regis poscit dare aliicui Raguseo innodialia de aliqua pecunia*.¹¹ Prohibition of *udava* was confirmed in King Stefan Uroš Dečanski's charter issued to the Ragusans on 27 December 1321: the King orders that all disputes between Serbs and Ragusans shall be discussed in court (да имѣ нѣ ѣдаве ѣ комѣ годѣ дльгѣ, лише сѣдомѣ да се ицѣ, да не ѣд'нѣ срѣблинѣ а дрѣги ѣбров'чанинѣ).¹²

King Milutin's chrysobull for the monastery of Saint George (1300)¹³ and King Dušan's chrysobull for Htetovo monastery (1343)¹⁴ mention *udava* (ѣѣдава), but as a fine for the crime of so-called *samosud* (self-judgment). Dušan's Law Code prohibited *udava* in article 84: "There shall be neither ... nor imprisonment for debt, but let every man be tried according to law" (да нѣстѣ ... ѣѣдаве, тѣкмо да се ѣѣдѣ по законѣ).¹⁵

In spite of the prohibitions of *udava* and the fact that the sources from the second part of the 14th century do not mention it, it seems that *udava* was very

7 Ibid., p. 44.

8 Edited by Stojanović, *Stare srpske povelje i pisma*, vol. II, p. 19. See the article S. Ćirković, "Izam", in *LSSV*, pp. 249–250.

9 Mažuranić, *Prinosi*, p. 1487.

10 Daničić, *Rječnik iz književnih starina srpskih*, vol. III, p. 353.

11 Mošin, Ćirković, and Sindik, *Zbornik*, p. 344.

12 Edited by S. Ćirković, *SSA* 5 (2006), p. 44. The charter was attributed to King Milutin for a long time, but S. Ćirković, "Prva povelja kralja Stefana Dečanskog Dubrovniku" ["The First King Stefan Dečanski's Charter to Dubrovnik"], *PKJIF* 37 (1971), pp. 208–212, convincingly proved that the charter was promulgated by Milutin's son, Stefan Dečanski.

13 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 317, 326.

14 *SSA* 13 (2014), p. 150.

15 Burr, "The Code of Stephan Dušan", p. 214; Novaković, *Zakonik*, p. 66; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

common in relations between Serbs and Ragusans. We have information that in 1422 three Ragusan noblemen were captured for a debt (УДААЛЪ ИХЪ У НѢКЪ УДАВЪ). The Republic of Dubrovnik, in the letter addressed to Despot Stefan Lazarević (18 February 1422), complained of the self-willed imprisonment of its citizens and asked for them to be released. The Ragusans referred to *udava*'s interdiction as an ancient and firm legal institute, writing: "Your Lordships knows very well that among other good laws and liberties, that were written to us by magnificent Serbian Orthodox lords, Your progenitor and Your magnificent parent, Sainted Prince, it was confirmed that neither Turk, nor Greek, nor Serb, nor Ragusan, in all the State of Your Lordship, cannot imprison any Ragusan" (Господство ви добро знае кѣрь мегю инѣми добръми законьми словодыцинами имамо У славнѣхъ записехъ госпое православне сръбьске вашѣхъ прародитель и Светога Кнеза родителя ви и Господствомъ ви славнѣмъ потвергено да ни Тѣрчинь ни Грькъ ни Сръбинь ни Дѣбровчанин по вьсои дръжави Господства ви нѣ волянь ни море УДАТИ Дѣбровчанина).¹⁶ However, Despot Stefan Lazarević refused to insert a prohibition of *udava* in his treaty with Dubrovnik. As Ragusan's complaints on *udava* became very common, Despot Đurađ Branković agreed to add in two of his charters presented to Ragusans (13 December 1428 and 17 September 1445, with practically identical content) a short passage containing a strict prohibition of *udava*: "And the honest [Ragusan] noblemen mentioned to My Lordship what was not written to them by my Sainted and deceased parent Despot Stefan about *udava*; and for that reason My Lordship produced a deed of gift, that *udava* was not to be used on any Ragusan by anybody" (Имѣць оуспоменуше Госпидствоу ни више реченным властеле, цю имъ нѣсть било записано У Господина и родителя ми Деспота Стефана за оудаве. и за този им оучини милость Господство ми да нѣ оудаве на Дѣбровчанинѣ по никѣднь начинь ни ѿ кога).¹⁷

On the basis of the quoted sources, a first interpretation of *udava* was given by Stojan Novaković already in 1892. According to him *udava* was arbitrary imprisonment for debt, without a court trial.¹⁸ His opinion was accepted by most prominent experts for the history of the Serbian Middle Ages, such as

16 Mladenović, *Povelje i pisma despota Stefana*, p. 76.

17 Edited by Stojanović, *Stare srpske povelje i pisma*, vol. II, p. 19.

18 S. Novaković, "Udava ili samovlasno apšenje za dug u starom srpskom zakonodavstvu i narodnim običajima. Prilog k poznavanju srednjovekovnog parničnog postupka u Srbiji" ["Udava or Arbitrary Imprisonment for Debt in Old Serbian Legislation and Folk Customs. Contribution to the Knowledge of Mediaeval Civil Trial Procedure in Serbia"], *Pravnik* 1 (1892), pp. 97–107 = *Vaskrs države srpske i druge studije*, КЈР 1 (Belgrade 1986), pp. 225–242.

Constantine Jireček,¹⁹ Teodor Taranovski,²⁰ Alexander Solovjev,²¹ Nikola Radojčić,²² and Dragoslav Janković.²³ However, it was clear even to Novaković that in several cases, described by later sources, *udava* does not mean only self-judgment (*samosud*), but an action of State authorities as well. A different interpretation of *udava* was given by Sima Ćirković, presenting two new documents from the Archives of Dubrovnik.²⁴

The first document from the year 1411 says that Mara Branković²⁵ pronounced a fine of 500 perpers as *udava* to Ragusan citizen Stipko Sergulović, and deprived him of one mining shaft (*vui laviti usdato a Madona Mara et per questo la dicta dompna gla tolto una sua fossa ... e se la ano data a dona Mara digando soura de mi che son torto, toglili yperperi 5000*).²⁶ So, Stipko was accused by his enemies and punished with *udava*.

The second document states that the Ragusan merchant Maroje Držić had to pay in Srebrenica a fine of 50 perpers because he avoided paying the customs duty. The next year, when he was writing an appeal to the Ragusan Community, he called the fine that he paid *udava* (*pena ala zitade zoe vdaua*).²⁷

The conclusion of Sima Ćirković is that *udava* was a fine pronounced without trial, a type of fixed sentence specifying the exact penalty that would follow

19 Jireček and Radonjić, *Istorija Srba*, vol. I, p. 278; vol. II, p. 119.

20 Taranovski, *Istorija*, vol. II, p. 44, vol. IV, p. 177. Taranovski added that *udava* means at the same time arbitrary imprisonment for debt and a fine prescribed for that crime, mentioned in the Saint George and Htetovo chrysobulls. Novaković did not take into consideration these charters because when he was writing his paper, they were not edited.

21 Solovjev, *Zakonodavstvo Stefana Dušana*, p. 218.

22 Radojčić, *Zakonik cara Stefana Dušana*, p. 113, note 3, comment on article 84 of Dušan's Law Code.

23 Janković, *Istorija države i prava feudalne Srbije*, pp. 88–89.

24 S. Ćirković, "Udava", *ZFFB* 11.1 (1970), pp. 345–351. His opinion was defended by A. Veselinović, "Još jednom o značenju srednjovekovnog pojma *udava*" ["Once More on the Meaning of the Mediaeval Term *Udava*"], *IG* 1–2 (1988), pp. 129–135.

25 Mara Lazarević Branković (?–12 April 1426) was the eldest daughter of Prince Lazar Hrebeljanović and Princess Militza. Around 1371 she married the mighty lord Vuk Branković, from whom she had three sons: Grgur, Đurađ and Lazar. After the death of her husband, in the period 1402–1412, Mara supported her sons in regaining control of their father's lands, which at that time were annexed to the possessions of her brother and their uncle Stefan Lazarević. In 1412 she negotiated with the help of one of her sisters, Olivera Lazarević, for the reconciliation of Đurađ Branković and Stefan Lazarević, which succeeded in 1425–1426. Đurađ was appointed successor to his uncle Stefan Lazarević. Not to be confused with her granddaughter Mara Branković or Mara Despina Hatun, also known as Sultana Marija Armerissa, daughter of Đurađ Branković and Eirene Kantakouzine, who entered the harem of Sultan Murad II of the Ottoman Empire.

26 Ćirković, "Udava", pp. 349–350.

27 *Ibid.*, p. 350.

conviction of each offence. So, *udava* is not self-judgment (*samosud*); on the contrary it is a penalty pronounced by a court, but without trial procedure. The income of the *udava* was collected by the monarch or monasteries, if they had immunity charters from the sovereign himself. Therefore in some charters *udava* was mentioned beside other fines. The Ragusans continually requested the abolition of *udava* because the application of *udava* would mean that they had to appear before Serbian courts, contrary to the judicial immunity that they had.²⁸ However, it is possible that the term *udava* changed its meaning in the 15th century.

Legal proceedings was designated in Dušan's Law Code and in two treaties with Dubrovnik (1349 and 1357) by the wording *da se ište sudom i pravdom* (ДА СЕ ИШЕ СОУДОМЪ И ПРАВДОМЪ) = "let him sue through the court and by justice". The verb *iskati*²⁹ means to seek, to pursue, to sue, in legal terminology to launch a lawsuit against a person or entity. An accusation, a formal charge against a person, was called *potvor* (ПОТВОР), and it can be found in two of King Milutin's charters³⁰ and in articles 79, 105, 115, 132, 137, 161, 162, 165 and 181 of the Code. Dušan's Law Code uses the verb *potvoriti* (ПОТВОРИТИ) as well (articles 162, 165, 181), meaning to accuse, to bring a formal charge against a person. These words are no longer in use.

Iskati sudom ("sue through the court") designates litigation, a contest in a court of law for the purpose of enforcing a right or seeking a remedy. An accusatory procedure was applied to both criminal and civil trial procedures. This means that only litigants brought actions and carried the burden of proving the guilt of the party to a lawsuit. The inquisitorial system was an exception, and it is present in articles 145–147, referring to professional brigands and thieves. Article 157 orders that "the *kephales* and patrols shall seek robbers and thieves" (А КЕФАЛІЕ СТРАЖЕ ДА ИЩУ И ГОУСАРЕ И ТАТИ).³¹

28 The interpretation of Sima Ćirković is today accepted by Serbian historians of the Middle Ages. See M. Blagojević, "Vladar i podanici, vlastela i vojnici, zavisni ljudi i trgovci" ["Sovereign and Subjects, Noblemen and Soldiers, Serfs and Merchants"], in *ISN*, vol. I, p. 387, and A. Veselinović, "Udava", in *LSSV*, pp. 758–759. However, some legal historians still support the opinion of Novaković and Taranovski.

29 In modern Serbian it is obsolete and rarely in use.

30 Mošin, Ćirković, and Sindik, *Zbornik*, pp. 326 and 542.

31 Burr, "The Code of Stephan Dušan", p. 530; Novaković, *Zakonik*, p. 123; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

2 Stages of a Trial

2.1 Summons

A summons is a formal notice to the defendant that a lawsuit has begun and that the defendant must file an answer within the number of days set by law or lose the case by default. In early Serbian law the person who served a summons on someone was the plaintiff himself, with an escort of aiders and witnesses, selected among his relatives or neighbours. In the 13th and 14th centuries, the summons became an instrument for commencing a civil action or special proceeding, and it was under the public control of court officials. A summons directs the person to appear in court to answer the charge. Charters promulgated before Dušan's Law Code testify that summons could be signed by the clerk or under the seal of the court. In the Žiča chrysobull we read: "An Archbishop's man shall not be summoned to the King without royal seal, but if an Archbishop's man is at fault, let him be summoned with royal seal" (И да се не позива архиепископовъ ѡловѣкъ къ краљу безъ краљеве печѣаты, нь ако ѣ комѡ чимъ длѣжнь архиепископовъ ѡловѣкъ, да се позива съ краљевомъ печѣатию къ краљу).³² There is a similar provision in Saint George's charter: "Hegoumenos shall not be summoned without an Imperial writ" (Игоумень да се не позива безъ книгѣ царьскѣ).³³ Dušan's Law Code contains further information on summons.

Article 61 says: "if someone has summoned him to the court" (ако га кто позыва на соудъ), and article 89, "if a man summon an offender before the judges" (кто позовѣт кривѣца прѣдъ соудѣ).³⁴ According to these articles it is clear that a person who summons is the party who complains or sues (plaintiff) and seeks remedial relief for an injury to rights. However, a person who sends a summons was not only the plaintiff, but a *pristav* as well (articles 56 and 104). A *pristav* could testify that a summons was delivered. To enforce a summons as a type of "public faith" (*fides publica*) in some cases a seal was needed to confirm the authenticity of the summons. The custom of sending a judge's seal (or seal's print) for the purpose of proving the identity of court officials arose in the Frankish Empire and spread later through the whole of Western Europe. A so-called *sigillum citationis* was mentioned at the end of the 10th century in Hungary and Dalmatia, and in Serbia it is known from the Žiča chrysobull (see above). Article 62 of Dušan's Law Code orders: "A greater lord

32 Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

33 Ibid., p. 327.

34 Burr, "The Code of Stephan Dušan", pp. 210, 215; Novaković, *Zakonik*, pp. 51, 69; *Zakonik cara Stefana Dušana*, vol. II, p. 244; vol. III, pp. 116, 122.

shall not be summoned without the writ of the court, but others with the seal" (ВЛАТЕЛИНЬ ВЕЛѢИ ДА СЕ НЕ ПОЗЫВА, БЕЗЪ КНИГѢ СОУДИНЕ, А ПРОЧІИМЪ ПЕЧАТЬ).³⁵ So, article 62 makes a difference between a summons with seal (verbal summons) and a summons with a writ of the court.³⁶ That a summons with a seal was a verbal summons is confirmed by article 56, which says that a nobleman who was summoned with a seal "shall be warned beforehand" (И ДА МЪ СЕ ПРѢГНЕ ПРИПОВѢДА),³⁷ i.e. he must be told why he was summoned. Summons with a seal was a common rule in Serbia for all subjects, except greater lords who enjoyed the privilege of being summoned with the writ of the court.

Summons could be sent to any individuals. However, article 104, entitled "On officers in the absence of a husband" (Њ ПРИСТАВЪ БЕЗЪ МОУЖА), orders: "The officer of the court (*pristav*) shall not call upon a wife when the husband is not at home, nor shall a wife be summoned to court without her husband, but a wife shall give her husband notice when she goes to court. And in that matter a husband is guiltless, until she give him notice" (И ДА СЕ НЕ НАВѢДЕ ПРИСТАВЪ НА ЖЕНЪ КЪДИ НѢСТЬ МОУЖА ДОМА. НИ ДА СЕ ПОЗИВА ЖЕНА БЕЗЪ МОУЖА, НЪ ДА СИ ДАА ЖЕНА МОУЖЪ ГЛАСЪ ДА ГРЕДЕ НА СОУД. ОУ ТОМЪЖИ МОУЖЪ НѢСТЬ КРЫВЪ, ДОГДА МЪ ДАДЕ ГЛАСЪ).³⁸ A widow and a single woman could be summoned alone, and she may designate a representative to litigate for her (article 73, "Of the poor", Њ СИРОТЪ): "A poor person who cannot bring an action nor defend one, let him have an advocate to act for him" (СИРОТА КОГА НѢСТЬ ІАКА ПРѢТИ ИЛИ УТПИРАТИ, ДА ДАЕ ПЪРЦА КОИ КЕ УТПИРАТИ).³⁹ According to article 56, a lord shall not be summoned in the evening, but before dinner (ВЛАСТЪЛИНЬ НА ВЕЧЕРИИ ДА СЕ НЕ ПОЗИВА, РАЗВѢ ДА СЕ ПОЗИВА ПРѢГНЕ УВѢДА).⁴⁰ The sources do not give information as to what time members of other social classes shall be summoned.

The second part of article 56 orders: "And whosoever shall be summoned by the officer (*pristav*) before dinner and shall not come by dinner time, he is at fault" (И КТО БОУДѢ ПОЗВАНЪ ПРѢГНЕ УВѢДА С ПРИСТАВОМЪ И НЕ ПРІИДЕ НА УВѢДЪ, ДА

35 Burr, "The Code of Stephan Dušan", p. 210; Novaković, *Zakonik*, p. 51; *Zakonik cara Stefana Dušana*, vol. III, 116.

36 Cf. the early English parliaments to which only the greater lords were summoned by individual writ. Burr, "The Code of Stephan Dušan", p. 210, comment on article 62.

37 Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 48; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

38 Burr, "The Code of Stephan Dušan", p. 516; Novaković, *Zakonik*, p. 80; *Zakonik cara Stefana Dušana*, vol. III, p. 126.

39 Burr, "The Code of Stephan Dušan", p. 212; Novaković, *Zakonik*, p. 59; *Zakonik cara Stefana Dušana*, vol. III, p. 118.

40 Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 48; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

кѣсть кривъ).⁴¹ This means that the summoned person had to appear at a scheduled hearing the same day. This clause is strange, because a party against whom the suit is brought (the defendant) usually obtains a term of several days (or three weeks) to arrive at the judge's court and to prepare the defence. It is hard to believe that in the conditions of the 14th century any person could appear at court the same day of summons. According to the hypothesis of Taranovski, article 56 determines only the duration of a scheduled hearing and not an interval between summons and hearing. The duration of that interval remains unknown, because the legal sources give no information.⁴²

If the summons was sent on "Palace Court" or by "Court Judge", then a litigation should be disputed immediately. It is clear from article 66, entitled "Of brothers" (ѿ брѣтѣн'цѣхъ), referring to the judicial responsibility of members of a so-called *zadruga* (extended family):

When brothers are together in one house and someone summons them before the court, he shall dispute the case whom the court shall indicate. But if it so be that one of them be at the Tsar's court or at the court of justice and he come and say: "I will submit my elder brother to the court", then let him do so and let him not be driven by force to the court.

Брѣтѣн'ции кои сѣ заедно, оу единой коукиѣ, кѣдѣ ихъ кто позовѣ на домѣ кои вѣдъ ныхъ прѣиде, тѣзи да ѿтпирѣ; ако ли га вѣрѣте на дворѣ царевѣ, али соудиноу да прѣиде и рече: дати кю брата стареега на сѣдѣ да моу даа силе да мѣ не ѿтпирѣти.⁴³

The stubborn refusal of a summons and nonappearance before a court was called *prestoj* or *pečat*, and it was considered as a crime against the judiciary system.⁴⁴ Soldiers from all social classes had a special privilege referring to the summons. According to article 61, entitled "Of returning from the army" (ѿ пошѣстви воеисѣ): "When a lord returns home from the army, or any other soldier, if he be summoned to the court of justice, let him remain at home for three weeks and then let him go to court" (Кѣди прѣиде властѣлинъ с воеисѣ домоу, или кои любе воиникъ; ако га кто позывѣ на соудѣ; да боудѣ дома, ѿ неделеи,

41 Burr, "The Code of Stephan Dušan", p. 209; Novaković, *Zakonik*, p. 48; *Zakonik cara Stefana Dušana*, vol. III, p. 114.

42 Taranovski, *Istorija*, vol. IV, p. 183.

43 Burr, "The Code of Stephan Dušan", p. 211; Novaković, *Zakonik*, p. 54; *Zakonik cara Stefana Dušana*, vol. III, p. 116.

44 See Chapter 20, section 2.

тоузи да греде на сѣдѣ).⁴⁵ Dušan's Law Code does not mention any other valid reason for nonappearance before a court, even a malady.⁴⁶ The *Syntagma* of Matheas Blastares, in Chapter Δ (Δ) - 9, contains a provision ordering that a person who has lost his parents, wife or heirs of his blood (τοῦ τελευτήσαντος τοὺς γονεῖς, ἢ τὴν γυναῖκα, ἢ τοὺς κληρονόμους, οὐμὴρ'шаго родителѣ, или женоу, или наслѣдники) cannot be summoned (εἰς δικαστήριον ἔλκειν, на соудиште влѣшти) within nine days of a mourning (εἰ δὲ ἐντὸς τῶν ἐννέα ἡμερῶν τολμήσει τινα ὁμολογίαν .φ.-тихъ дньии проуостава плачев'наго).⁴⁷

Nonappearance before a court of a plaintiff was regulated by article 89 of the Code, entitled “Of summoning offenders” (Ѡ позванїи крив'ца): “If a man summon an offender before the judges and then do not come to court himself, but sit at home, the party summoned, if he come at the appointed time before the judges and remain according to the law, is discharged from that debt for which he was summoned, inasmuch as he that summoned him sits at home” (КѠ позовѣ крив'ца прѣд' соудїе позвавь а не поидѣ на соудъ, нъ сѣди дома; вб'зїи конїеть позванъ ако прїидѣ на рокъ прѣд' соудїе и вѣстѣи се по законѣ, тѣзи да кѣтъ проствѣт тогазїи дльга за кои є бытъ позванъ, ере внѣ позвавь дома сѣдїи).⁴⁸ To win a lawsuit it was not sufficient only to appear at the appointed time before the judges, but to remain according to the law (*otstoi se po zakonu*). “Remaining according to the law” (отѣстоати се, *perstare*)⁴⁹ or waiting for the plaintiff had to last the whole time determined for the court session—until dinner time (article 56). It seems that on *stanak* (*stanicum*) the waiting time was even longer—until the evening star (до звѣздаѣ).⁵⁰ Dušan's Law Code does not

45 Burr, “The Code of Stephan Dušan”, p. 210; Novaković, *Zakonik*, p. 51; *Zakonik cara Stefana Dušana*, vol. III, p. 116.

46 According to Taranovski, *Istorija*, vol. IV, p. 185, it would be hard to believe that malady was not considered as a good reason for nonappearance before a court. It is very probable that it was regulated by customary law.

47 Ed. Ralles and Potles, pp. 212–220; ed. Novaković, p. 230. The law was taken from the *Basilika* XXIII, 2, 2.

48 Burr, “The Code of Stephan Dušan”, p. 215; Novaković, *Zakonik*, p. 69; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

49 See Daničić, *Rječnik iz književnih starina srpskih*, vol. II, p. 258.

50 Constantine Jireček cited an example of waiting on *stanak* (1447) between Ragusans and the citizens of Trebinje (a town in the region of East Herzegovina, close to Dubrovnik). Radosav Ivanović from Trebinje sued three Ragusans for the murder of his brother. The case had to be disputed on *stanak*, and it was decided that at court there would appear “21 Ragusan villagers and 21 Serbian villagers and two assistants” (.в. дѣбровачцехъ кметѣи а .в. срѣпцехъ кметѣи и два прѣстава). Ragusans came to the border and sent an assistant (*pristav*) to the house of Radosav and his brothers. “We were waiting them, according to the law, with the jurors and assistants on the border until the evening star, and neither

quote any good reason for the nonappearance of a plaintiff that could release him from the loss of a lawsuit. However, the Ravanitza transcript in article 76 (89 in Novaković's edition) adds at the end of the text: only if malady retains the one who summoned (КРОМЕ АЦЕ БОЛЕЗ'НЬ УБЕД'ЖИТ ЗВАВ'ШАГО).⁵¹

2.2 So-called "Ruka" (Рукa, рука)

The Serbian word *ruka* (рука) literally means an arm or hand. Besides its basic meaning (part of the human arm beyond the wrist), *ruka* probably contains an allusion to some old legal formality in connection with an oath, and Stojan Novaković suggests that it means a guarantor when the first trial fails to reach a decision, in which case recourse was had to compurgators on oath.⁵² In the course of time *ruka* took on a pejorative meaning and the word designated surety (something that makes sure, protects, or gives assurance, as against loss, damage, or default), requested by the summoned person, with a purpose of liberating himself from court proceedings and liability. The Church prohibited such a *ruka*, and it was punishable by a fine, also named *ruka*.⁵³

Ruka was mentioned for the first time with the meaning of surety or protection in the Žiča chrysobull. When someone addressed any enquiry to the ecclesiastical court, it was considered as asking for protection. Such a protec-

Radosav, nor his brother, nor anyone of his brethern, came" (Чекасмо ихъ с поротници и с пръстави до звезде на граници по законѣ, а Радосавъ ни братъ мѣ ни, тко нихъ братъца не догоше). Therefore the Ragusan court decided that the accused Ragusans should be released from any liability. See Jireček, *Das Gesetzbuch des serbischen Caren Stephan Dušans*, p. 210.

51 Novaković, *Zakonik*, p. 69; *Zakonik cara Stefana Dušana*, vol. III, p. 316.

52 Novaković, *Zakonik*, pp. 196–197; Burr, "The Code of Stephan Dušan", p. 214.

53 In Roman law the word *manus* (a hand) signified power, control, authority, the right of physical coercion, and was often used as synonymous with *potestas*. Many other terms were derived from *manus*, such as: *manus marriage*—by this form of marriage, a woman was transferred from her family to the family of her husband and was said to be "in his hand" (*in manum viri*); *emancipatio* (emancipation) was the act by which a child who was under the power (*manus*) of his father (*patria potestas*) was set at liberty and made his own master; *manumissio* (manumission) was the act of liberating a slave from bondage and giving him freedom (*manus* = hand and *missio* = dismissal); *mancipatio* (*manus* = hand and *capere* = to seize, to acquire, to grip) was a certain ceremony or formal process anciently required to be performed, to perfect the sale or conveyance or *res Mancipi* (land, houses, horses, slaves, or cattle); when the successful plaintiff seized the debtor and, after reciting a set style of words, was held to have obtained power over the body of the debtor, it was called *manus iniectio* (*manus* = hand and *iniectio* = deposition); *mandatum* (*manus* = hand and *dato* = to give) was a contract by which a lawful business was committed to the management of another, and by him undertaken to be performed gratuitously. The examples are numerous and we cannot quote them all.

tion (*ruka*) the *consecrator*, i.e. bishop,⁵⁴ charged to the person who requested it, that is to the one who summoned (Иже позивают се прѣдъ светителе ере под рѣкѣ светителемъ ѿмѣт се, то такове рѣке и печати светителе да ѡзнимають).⁵⁵ Saint George's chrysobull, Queen Helen's charter on the village Zator, Saint Stephen's chrysobull⁵⁶ and the Dečani chrysobull⁵⁷ mention *ruka* side by side with *pečat* (печать), among different fines collected by the Church. In those charters *ruka* designates a judicial tax, paid by a party who requested court surety, and *pečat* a fine for contumacy. The Gračanitza (1321), Dečani (1330) and Htetovo (1343) chrysobulls cite *ruka* beside so-called *posluh* (послужьхъ).⁵⁸ As *posluh*⁵⁹ means judicial charge for interrogation of witnesses, in those documents *ruka* would designate the fee for beginning a civil action. However, in the Htetovo chrysobull *ruka* was opposed to the other fines (или ѿ роука, или ѿ послужьхъ, или ѿ глоба коѡа либо), but a few lines further *ruka* was quoted as one of the fines collected by the Church (цю се чини глоба на црьковъныхъ людехъ мала и великаа, в'се да ѡузима светаѡа црькы, или ѿ крага, или ѿ роука, или ѿ втѣби, или ѿ ѡудаба, или ѿ прѣстѡи, в'се да кестъ црьков'но).⁶⁰ All this testifies that *ruka* had different significances.⁶¹

As the giving of surety (*ruka*) by Church dignitaries and mighty lords subverted the authority of the State-court, Dušan's Law Code in article 84 strictly forbids it: "There shall be no surety in court" (Роукѣ на соудѣ да нѣсть).⁶² Article 92 of the Code uses the verb *zaručiti* (заруचितи), derived from the word *ruka*, meaning "to give a surety".⁶³

2.3 Litigants (*parci*, *пър'ци*)

Dušan's Law Code calls the parties to a lawsuit *parci* (пър'ци) = litigants (articles 161, 175, 181). The person who brings the suit is called *parčija* (пър'чїа) = the plaintiff. The person against whom the suit is brought is called *otparčija*

54 The Serbian word is *svetitelj* (Greek ὁ ἅγιος), meaning a bishop.

55 Mošin, Ćirković, and Sindik, *Zbornik*, p. 95.

56 Ibid., pp. 317, 326, 410, 465.

57 Edited by Ivić and Grković, p. 136.

58 Mošin, Ćirković, and Sindik, *Zbornik*, p. 503; Ivić and Grković, p. 136; *SSA* 13, p. 150.

59 For more on *posluh* see next section.

60 Edited by M. Koprivica, *SSA* 13 (2014), p. 150.

61 See S. Šarkić, "Über die Bedeutung des Wortes *Ruka* (Hand) im serbischen mittelalterlichen Recht", *Annals of the Faculty of Law in Belgrade, Belgrade Law Review, Journal of Legal and Social Sciences, University of Belgrade, University of Vienna*, Year LVIII (2010), no. 3, pp. 203–208.

62 Burr, "The Code of Stephan Dušan", p. 214; Novaković, *Zakonik*, p. 66; *Zakonik cara Stefana Dušana*, vol. II, p. 247; vol. III, p. 122.

63 For more on article 92 see next section.

(ѡтпѣр'чїа) = the defendant. In the charters from the 13th century we find the expression *suparnik* (соупарникъ) = adversary, rival, competitor, which corresponds to the term litigant (*parac*), but only in a figurative sense, for Lord God, Mother of God or some of the saints (most often Saint Nicholas, the most popular saint among Serbs). For example, in King Vladislav's charter presented to the monastery of Saint Nicholas on the island of Vranjina (1241–1242) we read: "And if someone has the impertinence to usurp that [privileges of the church] let his adversary be the Lord God, the Most Pure Mother of God ... and Saint Nicholas" (ѡбръѣте ли се кто и дръзнетъ потворити се, да моу ѣстъ соупарникъ Богъ и прѣвѣстага мати ѣго ... и светы Николлаѣ).⁶⁴

Litigants would come before the court for themselves. In the legal sources we have no information about whether they were allowed to send representatives instead. Only members of a so-called *zadruga* (extended family) could represent one another, according to article 66 of the Code, already quoted (see above). However, legal representatives existed for entities, i.e. churches and monasteries. Bishops and hegoumenos acted on behalf of churches and monasteries, as is clear from King Stefan Uroš's Dečanski chrysobull to the monastery of Hilandar (1327), regulating a dispute between the brethren of the monastery and two of the King's noblemen. Hegoumenos Kyr Gervasius appeared as the defender of the monastery's rights (see above).

In connection with litigants was the institution of so-called *navodčija* (наводъчина)⁶⁵ = informer, denouncer, squealer, mentioned by several charters. The Dečani chrysobull says that in a case of homicide half of the fine belongs to the church and half to the informer (а за враждоу ... црькви половина а наводъчини половина).⁶⁶ There is a similar provision in Saint Archangel's chrysobull: "And if it occurs that someone kills a church villager, a half of the fine for homicide to the church and half to the denouncer" (И ако се обръѣте на црьковномъ чловѣкоу вражда, половина наводъчїи, а половина црькви, и вражде и глобе).⁶⁷ On the manor belonging to Saint Stephen's monastery, there existed a rule that in case of bloodshed the perpetrator had to give three linens to the church and three to the informer (ѡкръжавиѣше црькви .Г. плат'на а наводъчини .Г. плат'на).⁶⁸ It seems that the *navodčija* came before the court (*ishodio na sud*) beside the plaintiff, as his assistant or maybe instead of the

64 Mošin, Ćirković, and Sindik, *Zbornik*, p. 163. A similar formula can be found in many other charters.

65 The word is no longer in use. The modern word is *potkazivač* (*номказувач*).

66 Edited by Ivić and Grković, p. 135.

67 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, pp. 112–113.

68 Mošin, Ćirković, and Sindik, *Zbornik*, p. 465.

plaintiff as his representative.⁶⁹ For this reason he received half of the fine. However, a provision ordering that the *navodčija* receive half of the fine for crimes of violence was applicable only on the territories of Old Serbian land. On the territories conquered from Byzantium all fines were reserved either for the State or the Church. The Byzantine system of fine collection was already accepted in the epoch of King Milutin, as is clear from the text of Saint George's chrysobull: "The church shall collect all fines ... and to the denouncer nothing, except what is stolen to him" (всака глоба црковна њестъ ... а наводѣѹни ници развѣ ѹгово лицѣ).⁷⁰ Dušan's Law Code does not mention the institute of *navodčija*.⁷¹

In order to ensure that there was no abuse at trial stage, article 84 of Dušan's Code orders: "There shall be ... in court false accusation" (на соудѣ да нѣсть впаданїа).⁷² The Serbian word *opadania* (false accusation) appears to mean the bringing by the accused of a false accusation against another party in order to divert the attention of the court. *Opadanie* is mentioned twice in Saint George's chrysobull as a fine for false accusation.⁷³ However, the same provision can be found in the second part of the Code, but with much more precision. Article 161, "Of jurors" (Ѡ поротницѣх), reads:

When litigants are suing in court and pleading their own case and the defendant is pleading his, he is not permitted falsely to accuse the plaintiff, neither of breach of faith, nor of any other matter, but only to defend his case. But when the trial is finished, if he have anything [to say], let him discuss it with him before my Imperial judge, but he shall not be believed in anything until the case is finished.

На соудѣ кон се пѣрѣци соудѣ и прѣ за свою причю, и внѣзи втпѣрѣча за цю га прїи, да нѣсть волѣнь втпѣрѣча глаголати потворѣнѣ на многазїи пѣрѣчїю, ни за невѣрѣ, ни за ино дѣло; развѣ да моу втпира; а кѣдѣ съверши соудѣ, ако цю има потомѣ да глаголѣ съ нимѣ, прѣд соудїами царства ми; а да моу се не вѣроуѣ ни оу чемѣ цю глаголѣ догда мѣ се исправїи.⁷⁴

69 Taranovski, *Istorija*, vol. IV, p. 189.

70 Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

71 See R. Mihaljčić, "Navodčija", in *LSSV*, p. 425.

72 Burr, "The Code of Stephan Dušan", p. 214; Novaković, *Zakonik*, p. 66; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

73 Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

74 Burr, "The Code of Stephan Dušan", p. 531; Novaković, *Zakonik*, p. 127; *Zakonik cara Stefana Dušana*, vol. III, p. 146.

This article forbids the defendant from attempting to discredit the plaintiff before the evidence is heard and a verdict obtained.

Article 167, entitled “Of litigants” (Ѡпърѡѡхъ), gives obligatory instructions to judges on how to estimate the veracity of sworn statements of the parties to a lawsuit: “When litigants come before the Imperial Court, those words shall be believed which they first utter, for such are to be believed, and on them shall judgment be given, but on the last words, nothing” (Пърѡи кои исходе на соуѡ царства ми, да кою речъ оуѡ говоре оу пръвѡиѡ, тезѡи речѡи да соу вѡрване, и темѡи речемъ да се соуѡи, а послѡднимъ ниѡо).⁷⁵

2.4 *Days for Appearance in Court (Dies)*

Roman law knew for *dies fasti* and *dies nefasti*, later *dies iudiciari et feriati*. *Dies fasti* in Roman law were days on which the courts were open, and justice could be legally administered, i.e. days on which it was lawful for the *praetor* to pronounce (*fari*) the “three words”: *do, dico, addico*. Hence they were called “triverbal days”, answering to the *dies iuridici* of English law. *Dies nefasti* were days on which the courts were closed, and it was unlawful to administer justice, answering to the *dies non iuridici* of English law.⁷⁶ With the triumph of Christianity, the days for appearance in court were designated according to the Christian calendar. So, Matheas Blatares introduced in his *Syntagma* two great chapters speaking on the Christian calendar: П-7, “On Holy Pascha”, i.e. Easter Sunday (Περѡ τοѡ ၡγѡου Πάσχα, Ѡ светѡи Пасѡѡ), and Т-5, “On Holy Lent and the customs related to it” (Περѡ тѡс ၡγѡѡс тессарακοστѡс, καѡ τῶν ἐν αὐτѡ τελουμένων ἑθῶν, Ѡ светѡи .м.-тѡиѡи и иже вѡ неѡи сѡгрѡшѡемѡхъ обѡиѡи).⁷⁷ Lawsuits were forbidden on Sundays, seven days before and after Easter, and on three other holy days (feasts). Criminal trial procedures were not allowed during the Lenten Fast. Among Serbian legal sources only treaties with Dubrovnik order that days for appearance in *stanak* are from Saint Michael’s day until Saint George’s day (see above). Other legal documents, including Dušan’s Law Code, do not fix days for appearance in court.

75 Burr, “The Code of Stephan Dušan”, p. 532; Novaković, *Zakonik*, p. 132; *Zakonik cara Stefana Dušana*, vol. III, p. 148.

76 *Black’s Law Dictionary*, p. 455.

77 Ed. Ralles and Potles, pp. 404–428, 456–473; ed. Novaković, pp. 426–453; 485–500.

3 Types of Evidence

Evidences are any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court as to their contention.⁷⁸ Serbian mediaeval law deals with several evidences.

3.1 So-called “Lice” (*corpus delicti*)

The age-old Slavonic word *lice* (лице) denotes the body of a crime (*corpus delicti*), the material substance upon which a crime has been committed, e.g., the corpse of a murdered man, the charred remains of a house burned down or a stolen thing. In a derivative sense, it is the objective proof or substantial fact that a crime has been committed. Beside that significance, *lice* also means face, countenance. Such a meaning prevails in modern Serbian, but it can be found in mediaeval documents too. For example in the chrysobull of the Great Župan Stefan Nemanja, presented to the monastery Studenitza (1183–1190), we read: “and not to see the holy face of God” (да не љзрѣтъ свѣтъ лица Божїа).⁷⁹

Lice in the meaning of *corpus delicti* is mentioned in Saint George’s charter⁸⁰ and articles 92, 149 and 180 of Dušan’s Law Code. There are also several expressions derived from the term *lice*: 1) *obličenie* (обличеніе) = “proof” (articles 149, 150); 2) *oblični* (обличніи) = “taken in the act” (article 149); 3) *oblično* (облично) = “detected”, “recognized” (article 109); 4) *polični* = an adjective designating the material substance upon which a crime has been committed: for example “On recognized cattle, horse or any other thing” (ѡ поличномъ скотѣ, или конѣ, или цю годѣ) in the title of article 92.⁸¹

3.2 So-called “Svod” (Сводъ)

Svod (from the verb *svesti*, *свесму* = reduce to, bring down to, boil down to, divert) means a special process of inquiry, known in Serbian, Russian, Czech and Polish law under the same name (*свод*, *svod*, *zuod*), in cases of disputed ownership (*actio rei vindicatio*, available to the owner against a person in possession of the stolen goods for their recovery) and *actio furti* (an action founded upon theft), especially of livestock. The accused party was called upon to give an account of his possession of the animal, and from whom he had originally

78 Black’s Law Dictionary, p. 555.

79 Mošin, Ćirković, and Sindik, *Zbornik*, p. 62. Cf. pp. 332, 436, 457, 537, 540.

80 Ibid., pp. 326, 327.

81 Novaković, *Zakonik*, p. 72; *Zakonik cara Stefana Dušana*, vol. III, p. 124.

acquired it; that person was then sent for and interrogated, and so on, until the whole history of the animal was traced back, and the existence, or otherwise, of a theft finally proved.⁸²

In Serbian 14th-century legal sources *svod* was used as evidence in cases of the crimes of larceny and robbery, especially of livestock (articles 180 and 193 of Dušan's Law Code).

Article 180, entitled "Of stolen goods" (ѿ гоушени), orders: "If anyone find anything robbed or stolen or taken by force, let each party in the case give evidence [i.e. *svod*]. If anyone buy anything, either in the territories of my Empire or in another land, let him give evidence [*svod*] touching it, and if he produce no evidence [*svod*], let him pay according to the law" (Аще кто цю оухватити гоушено, или крадено лицемъ, или силомъ оузето, въсакы в томъ да да сводъ; аще кто боудѣ коупилъ гдѣ любо или оу земли царства ми, или оу инои земли царства ми, винѣ да да в томъ сводъ; аще ли не да свода, да плакѣ по законѣ).⁸³ It is significant that article 180 prescribes a special process of inquiry (*svod*) even if a thing was bought "in another land", while the *Russkaya Pravda, Vast Version* in article 39 explicitly says that *svod* is allowed only in its own town, but not in a foreign land (А из своего города въ чужу землю свода неутѣ).⁸⁴

Article 193, runs as follows: "In inquisitions [*svod*] about horses and other acquisitions, or in any matter of justice, what is robbed or stolen, let an inquisition be made, or let him pay everything sevenfold. But if he say 'I bought in a foreign land from so-and-so', let the jurors release him from the fine; and if the jurors do not release him, let him pay a fine" (И сводъ конскыи и иныхъ добытъкъ или кон годѣ правѣ да что се гоуси или оукраде, томѣ да даа сводника; да плати въсакѣ самосѣдѣ мо. Ако ли рече кѣпихъ оу того зем'ли, да вправѣ доушевници вт глобе; ако ли га не вправѣ доушевници, да плати з' глобомъ).⁸⁵

It is clear that article 193 has changed the provision from article 180, which provides *svod* even in a foreign country. According to article 193 *svod* in a foreign land in doubtful cases was replaced by so-called *duševnici* (sworn arbitrators or valuers).⁸⁶ It is hard to explain such a correction, but it seems that *svod* was applied only in the territory of Serbia, because in foreign countries it was very difficult to realize it. This is supported by article 132, which prescribes that for

82 "The Anglo-Saxon codes are full of similar efforts to deal with cattle-rustlers". Burr, "The Code of Stephan Dušan", p. 535, comment on article 180.

83 Burr, "The Code of Stephan Dušan", pp. 534–535; Novaković, *Zakonik*, p. 139; *Zakonik cara Stefana Dušana*, vol. III, p. 152.

84 Ed. Yushkov, p. 112.

85 Burr, "The Code of Stephan Dušan", p. 537; Novaković, *Zakonik*, p. 144; *Zakonik cara Stefana Dušana*, vol. III, p. 276.

86 Cf. article 76 of the Code.

legally acquired objects in a foreign land “the dispute shall be settled before a jury according to the law” (да га вправи порота по закону). Two treaties with Dubrovnik (1349 and 1357) contain a similar order: *svod* shall not be applied in the case of a horse bought in a foreign land; only the oath of the buyer and one of his friends would be sufficient (а кои любо тръговѣць доведе квинѣ кѣпивъ из тѣхъ зем’ѣ а познаю се, да се кльне тѣзи тръговѣць самъдрѣги, ере га кѣтъ кѣпиль ѿ тѣхъи зем’ли, и не з’на тати и гдѣсара да не дае за този свода).⁸⁷

In the interest of freedom of trade, Tsar Dušan’s and Tsar Uroš’s treaties with Dubrovnik (20 September 1349 and 25 April 1357) introduced a special privilege for merchants. If a Ragusan merchant had bought a horse in a market-town and paid a customs tariff and someone else laid claim to that horse, the customs officer had to guarantee under oath that the merchant bought the horse and is not a thief. In that case an inquiry (*svod*) would not be required. But if the purchase was performed without the presence of a customs officer, the buyer had to give evidence (*svod*) regarding from whom he had originally acquired the horse (И кои тръговѣць кѣпи конѣ на тръгѣ и плати за нь царинѣ да рече цариникъ дѣшомъ ере кѣтъ тогази конѣ кѣпиль и за нѣга платилъ царинѣ а тати не з’наа да мѣ за този свода не сѣтъ, ако ли га такози не вправи цариникъ да да свода ѿ кога кѣтъ кѣпиль).⁸⁸ Later, Prince Lazar’s treaty with Dubrovnik (9 January 1387) contains even more information: if a Ragusan merchant bought a horse, and that horse was captured, either by a Serb or by a Saxon, the Ragusan had to swear, saying “my horse was not stolen or robbed”, that he does not know of any larceny or robbery, and that he bought the horse according to the law. In that case the damaged party could not demand a *svod* (и ако кои дѣбровчанин кѣпи конѣ и иногази конѣ ѡхвати сръбинъ или сасинъ и рече ѡкраден ми ѣ или гдѣшенъ да се кльне дѣбровчанин како нѣ свет’ца ино-мѣзи коню ни гдѣсе ни тат’бе, нѣ га ѣ кѣпиль).⁸⁹

3.3 Ordeal (*Mediaeval Latin Ordalium*)

The most ancient species of trial in almost all mediaeval laws was peculiarly distinguished by the appellation of *iudicium dei* or “judgment of God” (Serbian *božji sud*, *божју суд*), it being supposed that supernatural intervention would

87 SSA 11 (2012), p. 39, and SSA 12 (2013), p. 82.

88 SSA 11 (2012), p. 39, and SSA 12 (2013), p. 82.

89 Mladenović, *Povelje kneza Lazara*, p. 192. On *svod* see Novaković, *Zakonik*, pp. 254–255; S. Novaković, “Svod Dušanova zakonika u narodnoj pesmi” [“Dušan Law Code’s *svod* in Folk Songs”], in *Jagić-Festschrift—Zbornik u slavu V. Jagića* (Berlin 1908), pp. 61–64; Taranovski, *Istorija*, vol. IV, pp. 193–194; Solovjev, *Zakonik cara Stefana Dušana*, pp. 320–321, 329–330, and S. Šarkić, “Svod”, in *LSSV*, p. 658–659.

rescue an innocent person from the danger of physical harm to which he was exposed in this type of trial.⁹⁰ In Byzantine law there were two major kinds of judicial ordeal: single combat and holding a red-hot iron. However, ordeal was considered in Byzantium a barbaric practice and was probably borrowed from Westerners (either before or after 1204).⁹¹ In Serbian mediaeval law the ordeal was of two sorts—either fire ordeal or water ordeal.

The ordeal by fire or red-hot iron, which was performed either by taking up in the hand a piece of red-hot iron, of one, two, or three pounds weight, or by walking barefoot and blindfolded over nine red-hot ploughshares, laid lengthways at unequal distance.⁹²

Among Serbian sources the ordeal by red-hot iron (*železo*, железо = iron) is only mentioned by article 150 of Dušan's Law Code, entitled "Of thieves" (Љ ТАТИ): "If anyone sue a brigand or thief in the courts and there be no proof, then shall he undergo ordeal by iron, as I have decreed. Let them take to the doors of the church from the fire and place it upon the Holy Table" (И ако кто понице соудомь гоусара и тата, а не боудѣ убличенїа да имь єсть впрравданїе железо цю є положило царство ми; да га оузимаю оу вратѣх црьковныхъ вт вгнїа, и да га постави на светои трапезе).⁹³

The procedure in Ordeal by Hot-Iron was as follows: a piece of iron was heated in the doorway of a church and the accused was obliged to lift it from the fire and place it on the Holy Table. If he succeeded in doing this without hurting himself he was declared innocent and discharged, but if he burnt his hands, it was deemed that God had declared him guilty. The effect was obviously to leave the decision in the hands of the priests.⁹⁴

However, the Code provides ordeal by hot iron only in the case of a person suspected to be involved in a crime of larceny or robbery.

The water ordeal could be of hot or cold water, but Serbian legal sources mention only the hot-water ordeal, called *kotao* (literally "cauldron"), which was performed by plunging the bare arm up to the elbow in boiling water, and escaping unhurt.⁹⁵ The ordeal of hot water (*kotao*, "cauldron") was men-

90 *Black's Law Dictionary*, p. 1095.

91 See A. Kazhdan, "Ordeal", in *ODB*, p. 1531.

92 *Black's Law Dictionary*, p. 1096.

93 Burr, "The Code of Stephan Dušan", p. 527; Novaković, *Zakonik*, p. 117; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

94 Burr, "The Code of Stephan Dušan", p. 527.

95 The cold-water ordeal was performed by casting the person suspected into a river or pond

tioned for the first time in Saint George's charter: the chrysobull forbids a hot water ordeal to the villagers from Saint George's manor for any accusation (ДА НѢСТЬ КОТЛА ЛЮДЕМЪ СВЕТАГО ГЕВУРГИНА ... НИ ОУ КОМЪ ПОТВОРѢ).⁹⁶ The same prohibition was repeated in King Dušan's chrysobull presented to the monastery of Hilandar, from 6 May 1332 (И КОТЛА ДА ИМЪ НѢСТЬ).⁹⁷ However, Dušan's Law Code provides the "cauldron", but confines it to the common people in article 106, entitled "Of a lord's servants" (Љ ДВОРАНЕХЪ): "If any servant of a lord do any crime, if he be the son of a fief-holder⁹⁸ let him be judged by his father's household by jury; but if he be a commoner, let him be taken to the cauldron" (ДВОРАНЕ ВЛАСТѢВСКИ, АКО УЧНЫ КОЕ ЗЛО КТО УТ НИХЪ; КТО БОУДѢ ПРОИДРЕВИКЪ, ДА ГА ВПРАВѢ ОТЪЧИНА ДРОУЖИНА ПОРОТОМЪ; АКО ЛИ НЕСТЬ СЕБЬРЬ ДА ХЫТИ ОУ КОТЪЛЬ).⁹⁹

In spite of the provision of article 106, three of Tsar Dušan's charters promulgated after the Law Code (to *anagnost*¹⁰⁰ Dragoje, 21 May 1349, and two chrysobulls presented to the monastery of Hilandar, 2 and 17 May 1355) strictly prohibited the "cauldron" (И КОТЛА НА ИМЪ НѢ ...; И КОТЛА ДА ИМЪ НѢСТЬ НИ ЗА КЕДНЬ СОУДЪ).¹⁰¹ However, Saint Argangel's chrysobull forbids the "cauldron" in a case of mixed trials between the monastery's serfs and the inhabitants of a county, but it keeps it for mutual litigations between church people (И КОТЛА АРХАНГЕЛОВѢМЪ ЛЮДЕМЪ ДА НѢСТ СЪ ИНѢМИ ЖОУПІАНИ, РАЗВѢ МЕГНО СОВОМЪ ВЪ АРХАНГЕЛѢ).¹⁰²

Unlike with the ordeal by red-hot iron, the Serbian sources do not spell out for what type of case the hot-water ordeal was applied. The formulation that we find in legal acts is very broad: there shall be no "cauldron" for any accusation, for any trial, for any crime. It seems that "cauldron" was not in use only in criminal cases, but in civil lawsuits as well.

According to the interpretation of articles 102 and 131 of the Code, Stojan Novaković thought that in mediaeval Serbia there existed ordeal by combat

of cold water, when, if he floated without any action of swimming it was deemed evidence of his guilt; if he sank, he was acquitted. *Black's Law Dictionary*, p. 1096.

96 Mošin, Ćirković, and Sindik, *Zbornik*, p. 326.

97 Edited by V. Petrović, *SSA* 13 (2014), p. 7.

98 "The son of an official" in Burr's translation ("The Code of Stephan Dušan", p. 517).

99 Burr, "The Code of Stephan Dušan", p. 517; Novaković, *Zakonik*, p. 81; *Zakonik cara Stefana Dušana*, vol. III, p. 128.

100 Anagnost (from Greek ἀναγνώστης = lector or reader), a cleric in the first of the minor orders of the Eastern Church who reads lessons aloud from the Epistles or the Old Testament in the liturgy.

101 *SSA* 15 (2016), p. 48; *SSA* 11 (2012), pp. 66, 74.

102 Edited by Mišić and Subotin-Golubović, *Svetoarhandelovska hrisovulja*, p. 112.

(judicial duel), the oldest type of ordeal.¹⁰³ We shall examine those articles. Article 102, entitled “On cautionary deposits” (УЗДАНИЮМЪ), reads: “There shall not be deposited any caution by any man at any time. And whosoever shall so do, he shall pay sevenfold” (УЗДАНИА ДА НѢСТЬ НИКОМУ НИЦА НИКАКЪБА; КТО ЛИ СЕ ПОЗДА ЗА ЦЮ, ДА ПЛАТИ СЕМОСЕД’МО). Article 131, entitled “Of brawling” (У СВАДѢ), reads: “In the army there shall be no brawling. If two quarrel let them fight a duel and no other soldier shall help them. And if anyone go to succour or help, let him be flogged” (НА ВОИСЦѢ СВАДѢ ДА НѢСТЬ; АКО ЛИ СЕ СВАДИТА ДВА, ДА СЕ БІЕТА, А ИНѢ НИКТО УДѢ ВОИНИКЪ ДА ИМѢ НЕ ПОМОЖЕ; АКО ЛИ КТО ПОТѢЧЕ И ПОМОЖЕ НА ПОР’ВИЦѢ, УНИЗІИ ДА СЕ БІЮ).¹⁰⁴ The Serbian word translated as “cautionary deposit” is *uzdanije*, and Novaković understood it as judicial duel; according to him, article 102 forbade ordeal by combat, and that prohibition was confirmed in article 131.¹⁰⁵

However, the majority of modern scholars have rejected Novaković’s interpretation, because there is no proof that *uzdanije*, a word that has remained until today a puzzle,¹⁰⁶ means judicial duel. Besides, article 131 does not treat

103 Ordeal by combat (judicial duel) took place between two parties in a dispute, either two individuals or an individual and a government or other organization. They, or, under certain conditions, a designated “champion” acting on their behalf, would fight, and the loser of the fight or the party represented by the losing champion was deemed guilty or liable. Champions could be used by one or both parties in an individual versus individual dispute, and could represent an individual in a trial by an organization; an organization or state government by its nature had to be represented by a single combatant selected as a champion, although there are numerous cases of high ranking nobility, state officials and even monarchs volunteering to serve as champion. Combat between groups of representatives was less common but still occurred.

104 Burr, “The Code of Stephan Dušan”, pp. 516, 522–523; Novaković, *Zakonik*, pp. 79, 99; *Zakonik cara Stefana Dušana*, vol. III, pp. 126, 136.

105 Novaković, *Zakonik*, pp. 206–208.

106 The expression *uzdanije* (УЗДАНИЕ) was mentioned only once in Dušan’s Law Code (article 102), and in the other Serbian legal sources was unknown. The word provoked different interpretations. P.J. Šafarik translated the title of article 102 as “vom Hehlen”, and in note 71 he wrote: “Verzweifelt Wort! ... Niemand versteht diesen Paragraphen, weder von den Serben, noch sonst von slaw ... Ich übersetze daher aufs Gerathewohl: hehlen, verhehlen eine anvertraute (gestohlene) Sache” (Kucharski, *Antiquissima monumenta*, pp. 188, 220). Maciejowski, *Historia*, vol. VI, p. 365, translated the title of article 102, as “On Agreements Prohibited by Law”, and Daničić, *Rječnik iz književnih starina srpskih*, vol. I, p. 168, article ВЪЗДАНИЕ, wrote that in Ragusan acts *uzdanije* means *fiducia*, which has the same significance as *uzdanije* in Dušan’s Law Code. Later, Šafarik has shown that *uzdanije* existed in old Czech law, under the name *wzdán*, where it was chiefly invoked for material damage of a rural nature, such as felling timber, damage by straying cattle, poaching and land dispute. The Serbian word *uzdanije* is the phonetic equivalent of the Czech word (P.J. Šafarik, “O wzdáni”, *Časopis Českého Museum* XVIII [Prague 1844], pp. 384–399).

the matter of the ordeal by combat, but rather a duel provoked by a quarrel between two soldiers.¹⁰⁷ It seems that judicial duel did not exist in mediaeval Serbia.¹⁰⁸

3.4 *Judicial Oath* (ὄρκος, zakletva, заклетва, рота)

An oath is any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully. A judicial oath is one taken in some judicial proceedings or in relation to some matter connected with judicial proceedings, taken before an officer in open court, as distinguished from a “non-judicial” oath, which is taken before an officer *ex parte* or out of court.¹⁰⁹ Slavonic laws only mention the judicial oath (*sacramentum*,

Novaković (*Zakonik*, pp. 206–207) accepted Šafarik’s explication and illustrated it with an example from the Czech law code the *Maiestas Carolina* (1350), promulgated by Holy Roman Emperor Charles IV, Dušan’s contemporary. According to Novaković and Šafarik, *uzdanije* was a typical Slavonic institution. However, H. Jireček found traces of *uzdanije* in Homer’s *Iliad*, Book XVIII, 580–585:

And the people massed, streaming into the marketplace,
where a quarrel had broken out and two men struggled,
over the blood-price for a kinsman just murdered.

One declaimed in public, vowing payment in full—
the other spurned him, he would not tat a thing—

so both men pressed for a judge to cut the knot. (English translation by R. Fagles [New York 1990], p. 483)

Jireček also wrote that in ancient Greek law this institution was called παρακαταβολή (*deposita in litis aestimationem pecunia*), in Roman law it was called *sacramentum*—a wager (under the *Legis actio sacramento*)—plaintiff and defendant staked a fixed amount of money—*summa sacramenti*; the judgment decided which of the wagers was just, and in German law *die Wette* (H. Jireček, *Srovnalost starého práva slovanského se starým právem hellenským, římským a germanským, Rozprawy z oboru historie, filologie a literatury* [Vienna 1860]). J. Kapras, *K dějinám českého zástavního práva* (Prague 1903), pp. 6–11, separated *vzdání* from judicial duel and defined it as a judicial wager with elements of pledge. According to Taranovski, *Istorija*, vol. IV, p. 191, such an interpretation caused difficulties: if *uzdanije* was *sacramentum* (a wager) how could it be realized in spite of its prohibition prescribed by the second part of the article 102 (“And who so shall so do, he shall pay sevenfold”)? He added that he must acknowledge that *uzdanije* remained for him enigma. A. Jovanović, *Prinosci za istoriju starog srpskog prava* [Contributions for the History of Old Serbian Law], vol. II (Belgrade 1900), p. 16, expressed the opinion that *uzdanije* represented a criminal act, a part of self-will or self-judgment, but he failed to explain it adequately. Solovjev, *Zakonik cara Stefana Dušana*, p. 260, thought that Šafarik’s argumentation was the closest to the truth, and that this custom was in benefit of the rich nobility, who could deposit great amounts of money as a wager.

107 Taranovski, *Istorija*, vol. IV, p. 197.

108 See S. Ćirković, “Božji sud”, in *LSSV*, pp. 52–53.

109 *Black’s Law Dictionary*, p. 1071.

iusiurandum), using an old term, *rota* (*poma*, ροτα). The word survives in Czech and Polish, denoting a text of an oath.¹¹⁰ An oath was used in criminal and civil cases as well, and it was taken either by the plaintiff or defendant, when there was no other evidence. The essence of the statements was a series of solemn and formal words, any error in which could result in the dismissal of the action. Oaths were considered as a type of judgment of God: God would not allow a person whose oath was false to pronounce it correctly. So, if a litigant did not want to take an oath confirming his words, or did not take an oath validly, the court did not trust to his attestation. Contrary to this, with one who took an oath in the right way, the court recognized it as truthful.

In the Serbian legal documents we have information on oaths taken in the treaties with Dubrovnik. The example when a plaintiff takes an oath can be found in two treaties from 1349 and 1357: “And wherever a Ragusan gives his property [in deposit] to any merchant, and this person denied [that he had received a thing] from him, a Latin has to swear and it must be trusted to him, according to the law of my imperial parent and progenitor” (И гдѣ комѡ даѣ Дѡбровчанинѡ свои добиткѡ, комѡ гдѣ трѡговѡцѡ, терѣ мѡ од неѣга ѡ бѡхѡ ѡдритѡ, да се кльнѡтѡ Латининѡ за този да бѡдѣ вѡрованѡ, по законѡ, како сѡ имали ѡ родителѡ и прародителѡ царѡства ми).¹¹¹ In Prince Lazar’s treaty with Dubrovnik (1387), the formula is a little bit different: “And if a Ragusan gives his property to a Serb in good faith, and the Serb said: ‘You did not give it to me’, the Ragusan has to say by his good faith and soul that he gave him a property, and [the Serb] has to pay him” (и цю даа Дѡбровчанинѡ ... своеѡ иманиѡ ѡ вѡрѡ ако мѡ за ... сръбинѡ и рече неси ми даљ, да рече Дѡбровчанинѡ своимѡ вѡромѡ и дѡшом, цю мѡ ѡ даљ добитка, да мѡ плакиа).¹¹² The wording “to say by his good faith and soul” undoubtedly means “to take an oath”, “to swear”. So, we have a case when a plaintiff takes an oath, and his oath was considered as real evidence.

A case when a defendant takes an oath was already described in section 2 of this chapter, dedicated to the *svod*. Oaths taken in mutual lawsuits between Serbs were also mentioned in some documents. A list of estates of Htetovo monastery (1343) says that a bishop from Prizren, George Markoush, took an oath from elders and noblemen (И закле их ѡпископѡ призрѡвнѡски Геѡргѡинѡ Марѡкоушѡ все старѡце и властѡтеле).¹¹³ An oath of “honest men” (да се заклѡноуѡ страш-

110 Mažuranić, *Prinosi*, pp. 1261–1262.

111 SSA II (2012), p. 39, and SSA 12 (2013), p. 82.

112 Edited by Mladenović, *Povelje kneza Lazara*, p. 193.

113 Slaveva, Miljković-Pepel, and Mošin, *Spomenici za srednovekovnata i ponovata istorija na Makedonija*, vol. III, p. 290.

НИМЬ ЗАКЛЕТІЕМ) is mentioned in King Stefan Uroš's III Dečanski chrysobull to the monastery of Hilandar (1327).¹¹⁴ In a document concerning the boundaries in the region of Strumitsa (1376), we read that the bishop of Strumitsa, Daniel, took an oath from the noblemen of Strumitsa, and they swore by "frightful oaths" where the boundaries were (смѣрении епископъ Струмицки Даниль заклехъ боляре града Струмице ... И они се заклеше страшнимъ заклетиємъ вси въ єдина, и оуказаше).¹¹⁵ The oath was also mentioned in two documents from the year 1454 referring to the verdicts of Despot Đurađ Branković relating to the boundaries of Hilandar monastery.¹¹⁶

The *Syntagma* of Matheas Blastares contains several provisions referring to oaths, mostly taken from the *Basilika* and *Procheiron*. First, Chapter Δ (Д) - 10 says that witnesses, before they start testimony, must take an oath (Δεῖ τοὺς μάρτυρας πρότερον ὀμνύναι, πρὶν ἢ μαρτυρήσωσι, Подобаєтъ свѣдѣтелиємъ прѣвѣе клети се, прѣжде да же не свѣдѣтел'ствоуютъ).¹¹⁷ There are further details in Chapter Ε-32, entitled "On perjury" (Περὶ ἐπιорκίας, Ο κλετωпрѣстоупанєнии):¹¹⁸

- It is forbidden to bishops and clerics, to the *anagnost*, to swear (Ἐπὶ ἐπισκόπων καὶ κληρικῶν μέχρι καὶ ἀναγνώστων, τὸ ὀμνύναι ὅλως κεκάλυται, При епископѣхъ и причѣтницѣхъ да же и до чѣтцѣхъ еже клети се отпоудъ възбранєн'но ꙗсть).
- Nobody shall be punished who swears to God, because God shall punish false swearing. If someone, from zeal, swears to the Emperor, it shall be forgiven (Οὐδεὶς κατὰ Θεοῦ ὁμόσας κινδυνεύει· ἱκανὸν γὰρ ὁ ὄρκος τιμωρὸν ἔχει τὸ θεῖον· ὁ δὲ κατὰ βασιλέως ὁμόσας κατὰ τινα θερμότητα συγχωρεῖται, Никто же въ Бога кльнь се вѣдоу приємаєтъ; довол'но во клетва томлиєнїє имать вожьство; царємъ же кльньи се по нѣкоєи топлотѣ праштаєтъ се).¹¹⁹
- In doubtful cases, a judge usually proposes an oath and upon it delivers sentence (Ἐν τοῖς ἀμφιβόλοις εἴωθεν ὁ δικαστὴς εἰφέρειν ὄρκον, καὶ οὕτω ψηφίζεσθαι, Въ нѣмощиѣхъ соумнѣнїє обыче соудѣа приносити клетвоу, и тако соудити).¹²⁰
- Each of the required oaths shall also be respected when someone swears in his religious faith. Swearing in another religion, which is not allowed by law, shall not be accepted (πάς γὰρ θεμιτὸς ἐξ ἐπαγωγῆς ὄρκος φυλάττεται, καὶ ὃν τις ὁμόση κατὰ τὴν ἰδίαν θρησκείαν· ὁ δὲ κατὰ ἀδοκίμου θρησκείας γεγινώς ὄρκος

¹¹⁴ SSA 3 (2004), p. 5. This case was already described in Chapter 26, section 5.

¹¹⁵ Solovjev, *Odabrani spomenici*, p. 171.

¹¹⁶ Ibid., pp. 214, 216.

¹¹⁷ Ed. Ralles and Potles, p. 228; ed. Novaković, p. 240. Cf. *Basilica* XXI, 1, 23.

¹¹⁸ Ed. Ralles and Potles, pp. 288–293; ed. Novaković, pp. 302–308.

¹¹⁹ *Basilika* XXII, 5, 44–45.

¹²⁰ *Basilika* XXII, 5, 31.

οὐ φυλάττεται, β'сака бо прикладна отъ наведенїа клетва съхранѣиеть се, и еѡже кто кльнеть се въ свою в'ѣроу; въ неискουσному же в'ѣроу быв'шїа клетва не храниеть се).¹²¹

- He who took his Gospel oath in the church, either according to the judge's decision or on the request of the defendant, and later on it was found that his oath was false, let his tongue be cut off ('Ο ἐκ δικαστικῆς ψήφου, ἢ ἐξ αἰτήσεως τοῦ ἀντιδίκου ὄρκον ὑπέχων ἐπ' Ἐκκλησίας, τῶν ἀχράντων ἐφαπτόμενος εὐαγγελίων, ἐπιорκεῖν δὲ μετὰ ταῦτα ἐλεγχθεὶς, γλωσσοκοπέισθω, Иже отъ соудинаго соудѣ, или отъ испрошенїа соупърнича клетвоу сътвори въ цркви, прѣвѣстїихъ касѣе се еваггелїи, прѣвкльнь же се по сїхъ облитєнь бывъ, езыкѣ да оубѣжеть се емоу).¹²²

- An oath is a word that confirms the truth ('Ορκος ἐστὶ λόγος πιστούμενος δι' ἑαυτοῦ τὴν ἀλήθειαν, Клетва ѣсть слово оубѣраюшѣе собою истинноу).¹²³

Dušan's Law Code does not speak on oaths as evidence. Only article 151 says that "the priest in robes shall swear them [jurors]". But we shall discuss juries and jurors elsewhere.

3.5 *Compurgators or Conjurators (kletvenici, клетвеници, поротници)*

Compurgators or conjurators were neighbours of a person accused of a crime, or charged as a defendant in a civil action, who appeared and swore that they believed him in his oath. So, compurgation was a method of trial whereby a person charged with a crime could be absolved by swearing to innocence and producing a number of other persons willing to swear that they believed the accused's declaration of innocence.¹²⁴ The modern Serbian word for a compurgator is *kletvenik* (plural *kletvenici*) = "one bound by an oath", coming from *zakletva* (заклетва) = "an oath". As the oldest expression for an oath was *rota* (рота, ротѣ), the sources use for compurgators the term *porotnici* (поротници, поротници) = "jurors", "members of jury", and *porota* (порота, поротѣ) = "a jury", but the *porota* was not a jury in the English sense of the word today.¹²⁵ Other terms that the Serbian legal documents use for compurgators are *starinici* (стариници, старинници) = "honest men", *starci* (старци, старѣци) = "elders", *duševnici* (душевници, доушевници) = "valuers" and *svedoci* (сведоци, свѣдоци) = "witnesses". An oath of a plaintiff with five compurgators, called *svedoci* (literally "witnesses"), was very well known in Slavonic law under the title *samo-šest*

¹²¹ *Basilika* XXII, 5, 3.

¹²² *Procheiron* XXXIX, 46.

¹²³ Ed. Ralles and Potles, pp. 292–293; ed. Novaković, pp. 307–308.

¹²⁴ *Black's Law Dictionary*, p. 288.

¹²⁵ See section 4.

(САМО ШЕСТ, literally “only six”): it could be found in article 10 of the Law Code of Vinodol, or Vinodol Statute (1288),¹²⁶ article 65 of the Statute of Poljica (1440)¹²⁷ and the judicial protocol from Srebrenitsa, referring to the dispute concerning larceny between Ragusans and men of Bosnian Duke (Herceg)¹²⁸ Stefan (10 November 1457).¹²⁹

3.6 Witnesses (μάρτυρες, *svedoci*, сведоци, свѣдоци)

In general, a witness (Latin *testis*, Greek μάρτυς) is one who, being present, personally sees or perceives a thing and one who is called to testify before a court; a person whose declaration under oath is received as evidence for any purpose, whether such a declaration be made on oral examination or by deposition of an affidavit.¹³⁰ In the Serbian legal documents there are three terms to denote a witness: 1) *svedok* (сведок, свѣдокъ, plural *svedoci*, сведоци, свѣдоци), a word used in modern Serbian as well; 2) *posluh* (послух, послуухъ, plural *poslusi*, послуци, послууци, an obsolete word); and 3) *svedetelj* (сведетель, свѣдѣтель, plural *svedetelji*, сведетельи, свѣдѣтельи, an obsolete word as well).

Svedok, in plural form *svedoci* (witnesses), was mentioned only once: King Milutin's charter presented to the Roman-Catholic church of Holy Virgin Ratačka (1306) has a reference to two witnesses, Drago and Paul (и два свѣдока Драго и Павъль; *et doi testimonii Dragan et Pollo*).¹³¹ However, the word *svedok* more frequently denotes a compurgator.

¹²⁶ Edited by L. Margetić, *Iz Vinodolske prošlosti, pravni izvori i rasprave* [Legal Sources and Treaties from Vinodol's Past] (Rijeka 1980), p. 120. The Law Code of Vinodol, or the Vinodol Statute, is one of the oldest law texts written in the Chakavian dialect of Croatian. It was written in the Glagolitic alphabet in 1288, but preserved in a 16th-century copy. The Vinodol Statute represents an agreement between the people of Vinodol (a name for nine counties—Novi, Ledenice, Bribir, Grižane, Drivenik, Hreljin, Bakar, Trsat, Grobnik—located on the North Adriatic coast in Croatia) and their new liege lords Frangipani (Frankapani), the counts of the island of Krk (today also in Croatia).

¹²⁷ Edited by Jagić, p. 72.

¹²⁸ Herzog (female Herzogin) is a German hereditary title held by one who rules a territorial duchy, exercises feudal authority over one estate called a duchy, or possesses a right by law or tradition to be referred to by a ducal title. The word is usually translated by the English Duke and Latin *Dux*. Herzog was borrowed into other European languages, such as Russian *Gerzog* (Герцог), Belarus *Hertsag*, Serbian, Croatian and Bosnian *Herceg* (Херцег), Bulgarian *Hertsog* (Херцог), Latvian *Hercogas*, Estonian *Hertsog*, Finnish *Herttua*, Hungarian *Herzeg*, Georgian *Herts'ogi*, Danish *Hertug*, Dutch *Hertog*, Icelandic *Hertogi*, Luxembourgish *Herzog*, Norwegian *Hertog* and Swedish *Hertig*.

¹²⁹ Solovjev, *Odabrani spomenici*, p. 219.

¹³⁰ *Black's Law Dictionary*, pp. 1603–1604.

¹³¹ Mošin, Ćirković, and Sindik, *Zbornik*, pp. 398–399.

As with many other legal terms, *posluh* can have different meanings: 1) a witness himself; 2) a judicial hearing of a witness; and 3) a judicial tax for a witness hearing. The two last meanings are clear from a passage of King Dragutin's charter to Hilandar: "Hearings (*poslusi*) that are performed before the King or before King's officials, between villagers and Vlachs of this holy church for their lawsuits, either for enticing or for homicide, a tax (*posluh*) shall be two dinars" (послоуци кои се чине прѣд кралемъ или прѣд владальци двора кралева мегоу людми и Влахы сие светые цркви что се проу съ земляни, или самы мегоу собомъ, ако боуде до провода или до вражде, послонихъ да естъ два динара).¹³² Other charters mention *posluh*, but only as a tax to be paid for a judicial hearing.

The *Syntagma* of Matheas Blastares in Chapter Δ (Д) - 10, entitled "On bishops and clerics, who are tried for their offences" (Περὶ τῶν δικαζομένων δι' οἰκεία ἐγκλήματα ἐπισκόπων καὶ κληρικών, О прециихъ се за своа съгрѣшенія епископы и причѣтныи),¹³³ has the subtitle "On judicial witnesses" (Περὶ τῶν ἐν τοῖς δικαστηρίοις μαρτύρων, О иже въ соудилицихъ свѣдѣтелиехъ), in Serbian translation using the term *svedetelj*.¹³⁴ The laws were mostly taken from the *Basilika* and *Procheiron*.¹³⁵

- Rule 75 of Saint Apostles prohibits the testimony of a heretic and of only one believer (οὐδὲ εἰς μαρτυρίαν τὸν αἰρετικὸν προσίεσθαι διορίζεται, ὅπου γε οὐδὲ πιστὸν ἓνα μόνον, ни же въ свѣдѣтел'ство еретика приѣматн подобаетъ повелѣвати, идѣже ни же вѣр'на єдиногo тѣк'мо).
- In civil and criminal cases all persons are considered as trustworthy witnesses, except those to whom the law forbids or who are excused (Καὶ παράγονται καὶ ἐπὶ χρηματικῶν καὶ ἐγκληματικῶν ὑποθέσεων, εἰ μὴ κεκωλυμένοι ὑπὸ τοῦ νόμου, ἢ ἐξουσатеύομενοι, Δостоувернѣмъ быти подобаетъ свѣдѣтелиемъ, и привести се и о иманїи и грѣхов'ныхъ вѣщтехъ иже невѣзбран'ны соутъ отъ закона или освещаеми).¹³⁶
- "The one who was condemned for slander that provoked defamation does not have the right to testify" (Ἀπόβλητος εἰς μαρτυρίαν γίνεται ὁ καταδικασθεὶς διὰ τὸ ποιῆσαι ταραχώδη φλυαρίαν, Отвръжень въ свѣдѣтел'ство бываєтъ осуждєнь вывїи за еже сътворити смущєн'ноу блєдь).¹³⁷

¹³² Ibid., p. 269.

¹³³ Ed. Ralles and Potles, p. 221; ed. Novaković, p. 232.

¹³⁴ Ed. Ralles and Potles, p. 227; ed. Novaković, p. 239.

¹³⁵ *Basilika* XXI, 1; *Procheiron* XXVII, Περὶ μαρτύρων.

¹³⁶ *Basilika* XXI, 1, 1.

¹³⁷ *Basilika* XXI, 1, 20.

- “No court shall accept testimony of only one person, even if he is a senator” (ἐνὸς δὲ μαρτυρία οὐκ ἔστι δεκτὴ ἐν οἰαδῇ ποτε δίκῃ, κἄν συγκλητικὸς, *єдиноґо же свѣдѣтел’ство нѣсть приѣтно ни на коґовомъ любо соудѣ, аште и сик’клитикъ боудеть*).¹³⁸
- “In civil cases to the value of one *litre*, two faithful, honest, sworn witnesses testify; to [the value of] 50 *litres* three [witnesses]; if it is more, five [witnesses]. For charges in criminal cases shall be needed five faithful, trustworthy, sworn witnesses” (εἰ μὲν χρηματικὴ εἴη, μέχρι λίτρας μίξ, δύο πιστοὶ ἔντιμοι μάρτυρες ἐνομότως μαρτυρήσουσιν· εἰ δὲ ν’ λίτρων, τρεῖς· εἰ δὲ ἐπέκεινα, ἑ. εἰ δὲ ἐγκληματικὸν εἴη τὸ αἰτίημα, διὰ ἑ. μαρτύρων πιστῶν καὶ ἐντίμων ὁμνούντων, ἀποδείκνυται, *аште оубо за имѣнїе боудеть до литре єдиноґе, два вѣрна чѣстнаа свѣдѣтеля съ заклетиємъ свѣдѣтел’ствоуютъ; аште ли же до .и. литръ—три; аште ли же выше того—петъ; аште ли же о грѣсѣ боудеть обвиновенїе, петими свѣдѣтели вѣр’ными и чѣстными кльнотшными се оуказоуєтъ се*).
- “A witness to whom I can tell how to testify is not considered as a reliable one” (Οὐκ ἔστιν ἀξιόπιστος μάρτυς ὁ κελεύεσθαι δυνάμενος παρ’ ἐμοῦ ἐπὶ τῷ μαρτυρῆσαι, *нѣсть достовѣр’нъ свѣдѣтель иже повелѣваемъ быти могоу мноу въ еже свѣдѣтел’ствовати*).¹³⁹
- “A plaintiff may not bring household members as witnesses” (Ὁ κατήγορος οἰκειαχοὺς μάρτυρας οὐ δύναται παράγειν, *оґлаґольникъ домашнихъ свѣдѣтель не можетъ приводити*).¹⁴⁰
- “Woman should not ... testify upon making a will” (Ἡ γυνὴ οὐ μετέρχεται ... οὐδὲ ἐν διαθήκῃ μαρτυρεῖ, *Жени не проходить ... ни же въ завѣштани свѣдѣтел’ствоуєтъ*).
- “Emperor Leo’s Novel 48 prohibits women from testifying upon pacts and marriage agreements. It was ordered to them to testify on births and those things that were only allowed to be seen by women’s eyes” (Ἡ δὲ μὴ. νεαρά τοῦ βασιλέως Λέοντος κωλύει τὰς γυναῖκας ἐπὶ συμφωνοῖς μαρτυρεῖν καὶ συναλλάγμασιν· ἐπὶ δὲ τοκετῶν, καὶ ἐφ’ ὧν μόνῃ θηλειῶν ὄψις ὁρᾶν συγκεχώρηται, ἐπιτρέπονται μαρτυρεῖν, *Үетиридесете же и осма Новаа цара Лава въз’бранїаєтъ женамъ о прикосифонѣхъ свѣдѣтел’ствовати и съ замѣшен’ныхъ брачнїихъ. О рожденїахъ же и о ихъ же єдинѣхъ жен’цѣ би оґи зрѣти проштєн’нѣ соутъ, повелѣваемѣ соутъ свѣдѣтел’ствовати*).
- “Five witnesses are sufficient for proving if there is no written document; if there is a writing, according to the law, three witnesses are enough” (Ἀρκούσι

¹³⁸ *Basilika* XXI, 1, 23.

¹³⁹ *Basilika* XXI, 1, 6.

¹⁴⁰ *Basilika* XXI, 1, 23.

πρὸς ἀπόδειξιν πέντε μάρτυρες, ἐγγράφων μὴ ὄντων· ἰ δὲ εἰσιν ἔγγραφα, ἤτοι συμβόλαια, τρεῖς μόνον ἀρκοῦσιν, Довѣють къ оуказанію пять свѣдѣтель, въписаниемъ не соуштимъ; аще ли же соутъ въписаніа, рек'ше книгѣ записмоштен се по закону, три тѣк'мо довлѣють).

- “The poor do not testify, and a poor man is one whose property is valued at less than 50 golden coins” (Οἱ πένητες οὐ μαρτυροῦσι· πένης δὲ ἐστὶν ὁ μὴ ἔχων ν'. νομισμάτων περιουσίαν, Нищѣи не свѣдѣтельствовуютъ; нищъ же ксть не имѣи .и.—тимъ златникомъ иманіа).¹⁴¹
- “The freemane cannot testify against his ex-master or ex-master's son” (Οὐ μαρτυρεῖ ἀπελεύθερος κατὰ πάτρωνος, ἢ παιδὸς αὐτοῦ, Не свѣдѣтельствовуютъ освобожден'иыхъ на быв'шаго кему оуѣаника или сына его).¹⁴²
- “Those younger than 20 years may not testify,¹⁴³ nor can one who has been condemned by the Imperial Court and who did not have his rights restored, nor one who was imprisoned in a public dungeon or who was captured in taking money for the purpose of testifying or not testifying, or one who has been condemned for adultery” (Οὐ μαρτυρεῖ ὁ ἥττων κέ. ἐτῶν, οὔτε ὁ ἐν δημοσίῳ δικαστηρίῳ καταδικασθεὶς, καὶ μὴ ἀποκαταστάς, ἢ ἐν δεσμοῖς, ἢ ἐν δημοσίᾳ φρουρᾷ βληθεὶς· οὔτε ὁ ἐλεγχθεὶς λαβεῖν χρήματα ἐπὶ τῷ μαρτυρῆσαι, ἢ μὴ μαρτυρῆσαι· οὔτε ὁ καταδικασθεὶς ἐπὶ μοιχείᾳ, Не свѣдѣтельствуютъ мн'ши .к.—хъ лѣтъ, ни же иже въ народномъ соудилишти, рек'ше царскомъ, осужденъ бывъ и не оустаменивъ се, или въ оузахъ или въ народному тѣмницюу въврженъ бывіи; ни же обличенъ бывіи възети иманіа за еже свѣдѣтельствовати или не свѣдѣтельствовати; ни же осуждены о прѣлюбодѣствѣ).¹⁴⁴
- “A son may not testify for his father, nor father for his son. No one may testify in his case” (Υἱὸς πατρὶ, ἢ πατήρ υἱῷ, οὐ μαρτυρεῖ. Οὔτε οἷοςδῆποτε ἐν ἰδίῳ πράγματι, Сынь оцюу или отць сынюу не свѣдѣтельствуютъ. ни же кто любо о своиѣ вешти).¹⁴⁵
- “A slave does not testify; it is improper to give credence to slaves who accuse their masters, because a slave is by nature an enemy of his master” (Ὁ δοῦλος οὐ μαρτυρεῖ· οὐ γὰρ χρὴ πιστεῦειν προπετῶς τοῖς οἰκέταις λέγουσι κατὰ δεσποτῶν φύσει γὰρ ὁ δοῦλος τῷ δεσπότη πολέμιος, Рабъ не свѣдѣтельствуютъ; не бо ксть подобно вѣровати дрѣзѣ рабомъ глаголюшти на владыкы, кстьствомъ рабъ владыцѣ раг'ники).¹⁴⁶

141 *Procheiron* XXVII, 22.

142 *Basilika* LX, 34, 36.

143 In the original Greek text this limit is 25 years.

144 *Procheiron* XXVII, 24 and 26.

145 *Procheiron* XXVII, 27.

146 *Procheiron* XXVII, 28.

- “A man shall not testify twice against the same person” (‘Ο κατὰ τινος ἤδη μαρτυρήσας, οὐ πάλιν κατ’ αὐτοῦ, Иже на нѣкогоу оуже свѣдѣтелствовав, не свѣдѣтелствоуѣтъ пакы на нь).¹⁴⁷
- “The testimony of a minor, deaf, mute, furious, i.e. possessed, lascivious man, son in the power of his father ... is prohibited” (Κωλύεται μαρτυρεῖν ἄνηβρος, κωφός, ἄλαλος, μαινόμενος, ἄσωτος, υἱὸς ὑπεξούσιος, Възбраняѣтъ се свѣдѣтелствовати недорастыш, глуухъ, нѣмъ, неистовѣи, рек’ше бѣсѣуѣ се, блѣудныи, сын подвластныи).¹⁴⁸

So-called “*Justinian’s Law*” has two provisions on witnesses. First, article 5 orders that five trustworthy witnesses may replace a lost written document (Аще кто проу имать с кымъ ѡ нѣкоеи вещи, и речеѣ ималъ съмъ книгоу записноу, нь ю съмъ изгубилъ, да даѣтъ .ѿ. свѣдѣтели достоверныхъ да га въправе). Article 6 runs as follows: “If several witnesses testify in one case, and all of them do not testify identically, let them not be believed” (Аще свѣдѣтели мнози свѣдокують за единѣ вещь, и не свѣдокують вси еднако, да се не вѣрѣють).¹⁴⁹

Dušan’s Law Code does not mention witnesses as a type of evidence. However, article 80, “Of village boundaries” (Џ мегѣ сел’скои), uses the term *svedoci*, but to mean conjurators rather than the more common witnesses: “Touching village boundaries, let both claimants bring witnesses, one a half and the other a half, according to the law. And whom the witnesses shall name, his shall it be” (За мегѣ сел’ске, да дадѣ ѡбѡи кои ицѣ свѣдоке, онъ половиноѣ, а онъ половиноѣ по законѣ, да коудѣ рекѣ сведоци, тоговази да еѣтъ).¹⁵⁰ Such an appeal to the knowledge of “good men of the vicinity” contains in itself the germs of the universal “jury” system. A juror is merely a compurgator.¹⁵¹

3.7 Document

A document is an instrument on which is recorded, by means of letters, figures, or marks, the original, official, or legal form of something, which may be evidentially used. In this sense the term “document” applies to writings.¹⁵² Serbian mediaeval law marks a difference between public and private documents.

Public documents were State papers, or other instruments of public importance or interest, issued by the authority of the monarch. In mediaeval Ser-

¹⁴⁷ *Basilika* XXI, 1, 22.

¹⁴⁸ *Procheiron* XXVII, 33. *Syntagma*, ed. Ralles and Potles, pp. 227–231; ed. Novaković, pp. 239–243.

¹⁴⁹ Ed. Marković, p. 54.

¹⁵⁰ Burr, “The Code of Stephan Dušan”, p. 213; Novaković, *Zakonik*, p. 64; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

¹⁵¹ See the section 4.

¹⁵² *Black’s Law Dictionary*, p. 481.

bia, public documents were chrysobulls (χρυσόβουλλον), administrative orders called *prostagma* (πρόσταγμα), *horismos* (ὁρισμός) or *pittakion* (πιττάκιον), and other charters promulgated by the monarch. The most important were those with a general confirmation of the title of the nobility to their estates (articles 39 and 40 of the Code). For this type of charter, article 78 of the Code uses the phrase “a deed of grace”, i.e. gift (μιλοσѣнь книгоу) and article 79 “imperial grace”, i.e. deed (милосѣть царевѣ).¹⁵³ In disputes touching land, if anyone produce an imperial deed of gift and declared: “The Lord Tsar gave me this, as my equal held before me” (Далъ ми ѣсть господинъ царь, како ѣсть дръжалъ мои другъ прѣгнѣ мене),¹⁵⁴ it was sufficient as evidence. There is a similar formula in some charters contemporary to the Code.

A chrysobull, serving as a deed of gift, had to be authentic, i.e. competent, credible, and reliable as evidence. If the opposite party suspected that a chrysobull was an inauthentic act, it had to give evidence of forgery. However, to successfully disprove the authenticity of a signature and seal was very difficult, and legal sources do not describe any case of authentication. Chrysobulls had to be in accordance with the law; only in that case could they serve as evidence.

In a case when both litigants presented authentic chrysobulls (deeds of gift), as could happen because of the negligence of royal (imperial) administration, article 83, entitled “Of disputes about land” (ѿ потѣси землѣ), orders: “Where in one dispute¹⁵⁵ about the land two imperial deeds of gift are produced, the property shall be his who holds the land now, up to the time of this council, and his deed shall be upheld” (Гдѣ се изнесѣта двѣ книзѣ царевѣ за еднѣ ипотѣсь за землю, кто сѣда дръжи до сѣгази доба сѣбор’наго, тогова да ѣсть а милосѣть да се не потвори).¹⁵⁶ The Serbian legal sources do not contain information on whether some other rule existed before or after promulgation of the Code.

Beside imperial deeds, Dušan’s Law Code mentions judicial documents and proceedings relating to litigation, such as judgments, decrees, verdicts, writs, and warrants.

On private documents in Serbian mediaeval law we have no data. Only article 4 of so-called “*Justinian’s Law*” speaks on the importance of written docu-

153 Burr, “The Code of Stephan Dušan”, p. 213; Novaković, *Zakonik*, pp. 62–63; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

154 Burr, “The Code of Stephan Dušan”, p. 213; Novaković, *Zakonik*, p. 63; *Zakonik cara Stefana Dušana*, vol. III, p. 120.

155 The word is *ipotes*, from Greek ὑπόθεσις.

156 Burr, “The Code of Stephan Dušan”, p. 214; Novaković, *Zakonik*, p. 66; *Zakonik cara Stefana Dušana*, vol. III, p. 122.

ments: “If someone has litigation with anyone for any case, and he has a written document about that, but he hides it, and later [this document] helps him, and he shows it, this document shall not be recognized” (Аще ѣсть кто притѣ с кымъ за кою вещь, а имать писаниѣ въ томъ терѣ га криѣ, а послѣ моу боудѣтъ на помощь терѣ га ѣвѣтъ, да мѣ се потомъ не прѣимѣтъ ни въ что).¹⁵⁷ However, it is not a special provision on private documents as evidence.

3.8 Admissions

The Serbian legal sources, including Dušan's Law Code, do not contain information on admissions, confessions, concessions or voluntary acknowledgment made by a party of the existence of certain facts.

4 Jury (*porota*, *порота*)

The Serbian word *porota* (порота), usually translated as jury, was not a jury in the English sense of the word—a certain number of men and women selected according to law, and sworn (*iurati*) to inquire of certain matters or fact, and declare the truth upon evidence to be laid before them. In Serbian mediaeval law, *porota* (jury) was a collective name for members of a jury (jurors, *porotnici*, поротници), who were conjurators or compurgators, not the jurors of English law. We have written on them above. However, four articles of Dušan's Law Code expounded a jury system, and they have provoked different opinions on the essence of the Serbian jury: was it a special type of court introduced by Dušan's judicial reform, or a kind of evidence? Regarding this we shall examine those articles.

Article 151, “Of juries” (ѿ поротѣ), reads:

My Majesty commands. From now henceforward let there be a jury for great things and small. For a great matter, let there be 24 jurors, for a lesser matter 12, and for a small matter, six. And those jurors shall not make peace between the parties, but shall acquit or convict. And let every jury be in a church and the priest in robes shall swear them. And in the jury those are believed whom the majority acquit on oath.

Повелѣва царство ми; вът сзда на прѣда да ѣсть порота, и за мнѣго и за мало; за велико дѣло да ѣсть кѣ, поротници; а за помѣзны дѣлѣ, вѣ, порот-

¹⁵⁷ Ed. Marković, p. 54.

никъ; а за мало д'бло, ѿ, и тызи поротници да несѣ вол'ны никога оумирити, развѣ вправити, или искривити; и да несть вѣсака порота оу црькве и попь оу ризахъ да ихъ заклъне; и оу поротѣ камо се векуы кълноу и кога векуы вправе, тызи да сѣ вѣрованиі.¹⁵⁸

The last sentence means that the jury (*porota*) decided by a majority vote.

Article 152, "Of the law" (ѿ законѣ), reads:

As was the law under the Sainted King my grandfather,¹⁵⁹ let great lords be jurors for great lords, for middle persons their peers, and for commoners their peers. And on a jury there may be neither kinsman nor enemy.

Како несть биль законъ оу д'ѣда царства ми оу светаго крала; да сѣ велимъ власт'бломъ, вели власт'бле, а среднимъ людёмъ противѣ дружина ихъ; а себръд'амъ ихъ дружина да сѣ поротници, и да несть оу поротѣ родима, ни пизмѣника).¹⁶⁰

Here we have a Serbian custom, by no means the invention of Dušan, but an elaboration of the existing system already legalized by his grandfather King Milutin, who in his turn certainly only formalized an ancient national institution.¹⁶¹ None of the records of Milutin refer to juries, and the word *porota* does not occur, yet Dušan definitely attributes the institution to his grandfather, and in a charter of the same year as the Code (1349), granting certain privileges to the Ragusans, he provides for each side, in mixed disputes, to provide one half of the jury, one half Serbs and one half Latins, "according to the law as it was in the time of my father and my grandfather the Sainted King" (И кѣди прии Латининъ сръбина, да да Латининъ сръбинѣ половинѣ Латинъ а половинѣ сръблъ сведоке, такожде и сръбинъ кѣди прии Латинина, да мѣ даіе сведоке половинѣ сръблъ, а половинѣ Латинъ, по законѣ, како сѣ имали ѣ родителіа и прародителіа царства ми, светаго крала).¹⁶²

158 Burr, "The Code of Stephan Dušan", p. 527; Novaković, *Zakonik*, p. 118; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

159 I.e. King Stefan Uroš II Milutin.

160 Burr, "The Code of Stephan Dušan", p. 527; Novaković, *Zakonik*, p. 119; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

161 Đ. Đekić, *Zakonodavna delatnost kralja Milutina* [Legislative Activity of King Milutin] (Ruma 2001), pp. 61–95, considers that King Milutin promulgated a special law on juries. The author even tried to reconstruct this "Law" (p. 115). However, it seems that Đekić confused the mixed court with the mixed jury.

162 Edited by D. Ječmenica, *SSA 11* (2012), p. 39.

Article 152 also formalizes the principle of trial by peers (*iudicium parium suorum, jugement par les pairs*), saying that it was promulgated by King Milutin.¹⁶³ However, trial by peers is also mentioned by article 106, without referring to the Sainted King. It must have been an ancient institution of the Serbian people.

Another interesting point is the expression “middle-people”, which seems to indicate the beginning of the breakdown of the strong distinction between the privileged and unprivileged classes: here we have the greater lords on the one hand and the commoners on the other sharply discriminated as usual, but for the first time we find a definite recognition of an intermediate class, which presumably included the lesser barons, the merchants, the townsfolk and tradesmen, and superior craftsmen, who were not of aristocratic rank, but were superior to the rank and file of the commoners and countryfolk in general. Perhaps the expression “good people” (ДОБАРЬ ЧЛОВѢКЪ) in article 97 refers to this early bourgeoisie, in which we must probably also include foreign residents, Saxons, Ragusans and Italians, who formed the chief element in the towns.¹⁶⁴

Article 152 gave the litigants the right of protest against the presence on the jury of a kinsman of the other party or of a definite enemy. This is a novelty, because formerly compurgators (jurors) were designated between relatives and brethren of the accused person.¹⁶⁵

163 M. Polićević, “Ustrojstvo pravosuđa u staroj Srpskoj Državi u XIII i XIV veku”, p. 344, thought that King Milutin used the book of judicial reform of French King Louis IX, commonly known as Saint Louis or Louis the Saint (1226–1270), under the title *Les Établissements*.

164 Burr, “The Code of Stephan Dušan”, pp. 528–529; Novaković, *Zakonik*, p. 238.

165 The Statute of Kotor, in Chapter CXXII, entitled “On the way of taking an oath referring to the estates inside the city and outside the city” (*De modo sacramentorum faciendorum super possessionibus in Civitate et extra*), orders: We want and we establish that oaths on estates inside the City should be taken by the 12 best and closest relatives of the party who owes an oath ... On estates that are outside the City, the oath shall be taken by six of the best and closest kinsmen of the same party (*Volumus et statuimus, quod sacramenta, quae occurrerint facienda super aliquibus possessionibus, quae sunt intus Civitatem, fiant cum duodecim melioribus, et propinquieribus illius partis, cui dabitur sacramentum ... de possessionibus vero quae sunt extra Civitatem, fiat sacramentum cum sex melioribus, et propinquieribus suis ipsius partis*). The Statute of Vrbanik, a small town on the island of Krk (today in Croatia), written in the Glagolitic alphabet in 1388, prescribes that compurgators of both litigants (*porotnici*) could only be relatives (*bliziki, blizicstvo*, from *blizak* = close). Edited by L. Margetić and P. Strčić, *Krčki (Vrbanski) statut iz 1388* (Krk 1988), pp. 84, 96–98. However, the Statute of Budva, in Chapter CXIII, entitled “On witnesses” (*De Guarenti*), contains a provision which is close to article 152: “We order that before a court a defendant can contest a declaration of witness, if a witness is under the age of 14, if he is the

Article 153, “Of merchants” (Съ тръгов’цехъ), reads

Juries for foreigners and merchants shall be made half of Serbs and half of their fellow-countrymen, according to the law of the Sainted King.

Иновѣр’цѣмъ и тръгов’цемъ порот’ци половина Сръбъ, а половина ныхъ доружинѣ, по законѣ светлаго краля).¹⁶⁶ Although article 153 refers to the “Law of the Sainted King”, King Milutin’s treaties with Dubrovnik do not mention a mixed jury, but rather a mixed court.¹⁶⁷

Article 154, “Of jurymen” (Съ поротницѣхъ), reads

When jurors acquit on oath according to the law, and after acquittal guilt be proved against him whom they have acquitted, I shall fine those jurors 1000 perpers each, and in future those jurors shall not be believed and they may not take either husband or wife.

Кои се поротници клянѣ и вправѣ, иногда по законѣ и ако се по тоузи вправѣ полиціе вбрѣте истин’но оу иногда вправ’чіе когано је вправила порота; да оузме царство ми на тѣх’зи поротницехъ по тысѣци перьперъ; а векиѣ потомъ да несѣ тызи поротници вѣрованіи; ни да се кто отъ нихъ ни моужи ни женіи).¹⁶⁸

It is clear that the task of jurors (*porotnici*, i.e. compurgators) was to acquit on oath and release somebody from accusation. But if jurors made a mistake, and guilt was proved, they would have to pay a fine and their rights and reputation would be diminished. This kind of infamy is formulated in article 154 with a peculiar sentence: *ni da se kto ot nih ni muži ni ženi* (“and let none of

plaintiff’s father, brother, brother’s son, nephew, uncle, grandfather, bridesman, son-in-law, father-in-law (of husband) or any other kinsman by paternal or maternal line. Neither blood enemy, nor godfather may testify” (*Ordinemo, che a guaranti possa opponer la parte contraria in giudicio se il garante fosse de manco de anni 14, o se li fosse padre o fratello o cugino carnale o nievo o barba o avo o cugnado o genero o socero o consegro, e quello se intenda tanto del padron quanto della moglie li sopradetti. Ancora non può esser ... inimico del sangue, compare*).

166 Burr, “The Code of Stephan Dušan”, p. 527; Novaković, *Zakonik*, p. 120; *Zakonik cara Stefana Dušana*, vol. III, p. 142.

167 See Chapter 26, section 4.

168 Burr, “The Code of Stephan Dušan”, p. 528; Novaković, *Zakonik*, pp. 120–121; *Zakonik cara Stefana Dušana*, vol. III, p. 144.

them take husband or wife"). We already wrote that in Serbian different words are used for marrying according to the sex of the person: the verb for a man to marry is *oženiti se*, while for a woman, in the modern language, it is *udati se*, literally, to give oneself up. However, the Code uses the old verb *mužiti se*, from the word *muž*, a husband.¹⁶⁹ The words *ni muži* in the text cannot possibly be applied to a man. It must mean that in Dušan's time, women sat in juries.¹⁷⁰

The later Athos and Bistritsa texts have a different version: "And if they be found to have knowingly wrongfully acquitted or given up, or taken any bribe, having paid as aforesaid, they shall also be banished to another unknown land" (Athos text: и ако се изнагнє ер соу знаюкє криво вправили или втдали, или нѣкаа мита љзимали, плативше више реченное, и да се заточе оу инѣ землю не знаемоу; Bistritsa text: и ако се изнагнє ере соу знаюки криво вправѣли или втдали, или некаѣ мита оузимали, плативше више реченное, и да се заточе оу иноу землю, незнаемѣ).¹⁷¹ It seems that the Athos and Bistritsa version became a kind of correction of a previous provision, because the majority of compurgators (*porotnici*) could already be married.

Under the influence of Waclaw Alexander Maciejowski and Hermenegild Jireček, some Serbian legal historians, in a spirit of Slavic Romanticism, considered that the jury was not only an English institution, but a Slavonic (and

169 See Chapter 15, section 1.2.

170 That was the opinion of Taranovski, *Istorija*, vol. 11, p. 67, and Dolenc, *Dušanov zakonik*, p. 88. In the comment on article 154, Novaković (*Zakonik*, p. 239) wrote that the wording *da se kto od njih ni muži ni ženi* is not clear. Of course he understood the meaning of the verb *mužiti se*, but he did not believe that women could be jurors, because he considered that the Serbian jury was a type of court. Radovanović, *Dve omaške*, pp. 158–164, thought that prohibition of entering into a marriage for unconscientious jurors, male and female, was a permanent provision meaning extinction of their parentage and descendants. However, as Solovjev, *Zakonik cara Stefana Dušana*, pp. 299–301, pointed out, some other Slavonic legal sources mention women as jurors (*porotnici*). The Vinodol Statute in article 56 (ed. Margetić, p. 138), speaking on rape, orders that a raped woman who has no witnesses has to take an oath with 24 compurgators (jurors, *porotnici*) and "all her conjurators must be women" (*I vsi ne porotnici imaju biti žene*). The Statute of Vrbnik, in article 1 (ed. Margetić and Strčić, pp. 97–98), speaking on rape as well, says that a raped woman must have 12 compurgators. The first half of jurors (*porotnici*) were appointed by the court and the other half had to be found "among women of good reputation" (*tude žene dobra glasa*). Article 113 of the Budva Statute orders: "We also wish that a woman could be believed in cases referring to the order in a mill, on full age, on children and on maidenhead" (*Ancora volemo, che la moglie sia creduta, se fosse questione di giorno de molino, di età danni, de fanti, de virginità de punzella*).

171 Burr, "The Code of Stephan Dušan", p. 529; Novaković, *Zakonik*, p. 121; *Zakonik cara Stefana Dušana*, vol. 1, p. 198; vol. 11, p. 210.

Serbian) one as well.¹⁷² According to that opinion, the jury was a kind of State court.¹⁷³ However, Božidar Marković, in his study on evidence in criminal trial procedures,¹⁷⁴ proved that the jury and jurors (*porota*, *porotnici*) mentioned in Dušan's Law Code were conjurators or compurgators, persons who appeared before a court and swore that they believed in the oath of the accused person.¹⁷⁵ *Porotnici* were not part of any court, because they were not appointed by a court, but by litigants themselves. This is clear from Tsar Dušan's treaty with Dubrovnik (20 September 1349), where we read: "And when a Latin [Ragusan] sues a Serb, a Latin has to give a half of the witnesses [conjurators] of Latins, and a half of Serbs; also when a Serb sues a Latin, he has to give half of the witnesses of Serbs, and the other half of Latins, according to the law of my Imperial father and grandfather, the Sainted King" (И кѣди прии латининѣ сръбина, да да латининѣ сръбинѣ половинѣ латинѣ а половинѣ сръбѣ свѣдоке, такожде и сръбинѣ кѣди прии латинина, да мѣ даѣ свѣдоке половинѣ сръбѣ, а половинѣ латинѣ, по законѣ, како сѣ имали ѣ родитѣля и прародитѣля царства ми, светаго краля).¹⁷⁶ According to this text, during the reign of Kings Stefan Dečanski and Milutin there existed a "law" (custom) which prescribed that a plaintiff must appoint the "witnesses" (jurors, i.e. conjurators), half Serbs and half Ragusans, who would swear for the accused person.

5 The Judgment Pronounced by the Court or Judge and Its Execution

Dušan's Law Code contains two provisions concerning the judgment of the court (sentence, verdict, decision).¹⁷⁷ The first refers to the material aspect of a decision, and the second one to the formal aspect.

¹⁷² Such an opinion was given by J. Avakumović, "Stara srpska porota poređena sa engleskom porotom" ["Old Serbian Jury Compared with English Jury"], *Glas ssa* 44 (1894), pp. 13, 26, who thought that the cradle of the jury was in Old Serbia, as well as England, and even that the Serbian mixed jury was more perfect than the English one.

¹⁷³ Novaković, *Zakonik*, p. 258, who wrote that in mediaeval Serbia different types of courts administered justice, such as ecclesiastical courts, juries, city courts, "courts-baron" and mixed courts.

¹⁷⁴ B. Marković, *O dokazima u krivičnom postupku* [On Evidences in Criminal Trial Procedure] (Belgrade 1921), pp. 53–56.

¹⁷⁵ B. Marković's opinion was accepted by Taranovski, *Istorija*, vol. iv, pp. 215–218, and the majority of modern legal historians, including the author of this text (*Srednjovekovno srpsko pravo*, p. 120).

¹⁷⁶ *ssa* 11 (2012), p. 39. The same words were repeated in Tsar Uroš's treaty with Dubrovnik from 25 April 1357, *ssa* 12 (2013), p. 82.

¹⁷⁷ In Anglo-Saxon law there are several terms to denote the judgment formally pronounced

Article 172 (already quoted)¹⁷⁸ orders that court decisions must be righteous and according to the law: “Every judge shall judge according to the Code, justly, as written in the Code, and shall not judge by fear of me, the Tsar.”¹⁷⁹ This guarantee of judiciary independence is based on the Byzantine tradition *princeps legibus alligatus*.¹⁸⁰

Article 163 (also already quoted) orders that “every judge shall write his judgments ... and shall write a copy ...”.¹⁸¹

In primitive law systems the execution of the judgments pronounced by the court was a task of the party who won a lawsuit.¹⁸² The main outlines of the earliest situation in the realms of the Serbian Župans and later Kings are mostly inferred from historical interpretations of the clauses contained in Dušan's Law Code, which mentions crimes called *samosud* and *odboj*.¹⁸³ The practice of powerful armed lords dispensing justice on their own accord was

by the court. The word “sentence” is properly confined to criminal proceedings. In civil cases, the terms “judgment”, “decision”, “award”, “finding”, etc. are used. The formal decision made by a jury is called a “verdict”, while a “ruling” is a judicial or administrative interpretation of a provision of a statute, order, regulation, or ordinance. In Serbian there is only one word to denote the judgment pronounced by the court—*presuda* (нпесуда).

178 See Chapter 8, section 1.

179 Burr, “The Code of Stephan Dušan”, p. 533.

180 Cf. J.B. Bury, *The Constitution of the Later Roman Empire* (Cambridge 1910), p. 29.

181 Burr, “The Code of Stephan Dušan”, pp. 531–532.

182 Among numerous historical examples I shall quote Table III from the famous Roman Law of Twelve Tables (*Lex Duodecim Tabularum*):

One who has confessed a debt, or against whom judgment has been pronounced, shall have thirty days to pay it in. After that a forcible seizure of his person is allowed. The creditor shall bring him before the magistrate. Unless he pays the amount of the judgment or some one in the presence of the magistrate interferes in his behalf as protector the creditor so shall take him home and fasten him in stocks or fetters. He shall fasten him with not less than fifteen pounds of weight or, if he choose, with more. If the prisoner choose, he may furnish his own food. If he does not, the creditor must give him a pound of meal daily; if he choose he may give him more.

Aeris confessi rebusque iure iudicatis xxx dies iusti sunt. Post deinde manus iniecto esto. In ius ducito. Ni iudicatum facit aut quis endo eo in iure vindicit, secum ducito, vincito aut nervo aut compendibus xv pondo, ne minore, aut si volet maiore vincito. Si volet suo vivito. Ni suo vivit, qui eum vinctum habebit, libras farris endo dies dato. Si volet, plus dato.

English text according to the edition of O.J. Thatcher, *The Library of Original Sources, Vol. III, The Roman World* (Milwaukee WI 1901), pp. 9–11. Latin text according to the edition of A. Malenica, *Praktikum iz rimskog prava* (Novi Sad 1997), p. 66. The author used the critical edition by S. Riccobono, G. Baviera, A.C. Ferrini, G. Furlani and V. Arangio-Ruiz, *Fontes iuris romani anteiustiniani*, vol. I–III (Florence 1941, reprint 2007).

183 See Chapter 20, sections 1 and 3.

already strictly forbidden at the time that the Serbian legal sources were written. Following the model of their more developed neighbour—the Byzantine Empire—the State began to interfere in the payment of sanctions shaped in customary law. The charters of the Serbian Kings presented to the citizens of Dubrovnik (Ragusa) show that already in 13th century, execution of judgments pronounced by the court lay firmly in the hands of the public authorities. It is clear from King Stefan Uroš's oath to the Ragusans (23 August 1254), where we read:

If any meet a man from my Kingdom who was condemned for a debt to your man [to Ragusan], my judges shall deliver him his asset; if they do not deliver him what he is owed, they have to deliver the culprit, until the term they have indicated. If the judges do not deliver a condemnee, my Royal Majesty shall seize him and force him to pay his debt.

И ако се вбръте ѹловѣкъ зѣмьлѣ кралевьства ми вѣдѣнъ вѣшемъ ѹловѣкъ,
да мѣ мое сѣдѣце издаю добытъкъ. Аке ли мѣ добытка не стече, а вни да
подаю кривѣца самога до ѹрока, а доколѣ сѣдѣце ѹрекѣ. Ако ли га сѣдѣце
не издаде да гдѣ ми правѣда ѹкаже ѹзети тѣ длѣгъ, да га ѹзме кралевь-
ство ми и да га постави гдѣ га бѣде право поставити.¹⁸⁴

The Ragusan answer to the King's oath (August 1254) uses more precise terminology:

If any [Ragusan] citizen was condemned [for debt] by a common court [i.e. *stanak*] we shall deliver his property. But if his property is not sufficient, we shall deliver the culprit personally, to pay until the term appointed by the judges. If he does not pay till this term, your Royal Majesty shall do what is necessary.

И аке кога грагѣанина вѣди вѣыкы сѣдѣ да подаемо еговъ добытъкъ.
Аке ли мѣ добытка не стече, а мы самога кривѣца да даемо своувъ главоу,
доколѣ сѣдѣце ѹговоре да се плати. Не плати ли се до ѹрока, да потола да
е вѣтало на волю кралевьства ти.¹⁸⁵

In King Milutin's time the fine of *vražda* for the crime of homicide was already paid to the State.

¹⁸⁴ Mošin, Ćirković, and Sindik, *Zbornik*, p. 213.

¹⁸⁵ Ibid., p. 216.

At the time of the promulgation of Dušan's Law Code, legal actions had already acquired the features of public law, with some remnants of old customary procedures. The execution of judgment pronounced by the court is directly evidenced in procedural institutes stipulated in Dušan's Code. An official called a *pristav* had multiple procedural roles, including his prominent involvement in the action of *izdava* or, in modern terms, the form of execution.¹⁸⁶ The private aspect of justice and the court procedure in general is also apparent in the engagement of social classes called *otroci* and *sokalnici* in the execution of judgments.¹⁸⁷

Article 188 contains the first reference to a special official of the court called *globalar* or fines-master, whose duty was to collect the fines imposed, but only upon the written certificate of the judges. It is entitled "Of treasures" (О глобарехъ законъ) and reads: "The treasurers who are with the judges, whatsoever fines the judges shall impose and deliver in writing to the treasurer, such a fine shall the treasurer take. And save what the judge impose and certify in writing to the treasurer, the treasurer may not take from any man" (Глобари кон стое при сѣдѣхъ, что всѣде сѣдѣ и оуписав'ше даде глобаремъ, ты глобѣ да оузимають глобарѣ, аще не всѣде сѣдѣ, и не даде оуписав'ше глобаремъ, да нисѣ вольни глобари, ни за цю забавити комѣ).¹⁸⁸ According to article 194 (already quoted) it seems that in mediaeval Serbia there existed Church fine-masters (*crkveni globalari*), who collected fines for the Church. However, articles 188 and 194 occur only in the late Rakovac text, and we cannot be sure of their authenticity.¹⁸⁹

6 Trial Procedure in Semiautonomous Towns

6.1 Kotor

The Statute of Kotor contains numerous provisions on trial procedure, but they were not placed in a separate part of the text, but rather scattered through several chapters.

For summons the Statute uses the following terms: *vocare ad Curiam*, *citare ad Curiam*, and *vocare ad placitum*. The person who summoned litigants and

186 See Chapter 26, section 6.2. Cf. A. Solovjev, "Izdava po srednjevekovnom srpskom pravu" ["Izdava According to Serbian Mediaeval Law"], *APDN* 36.1–2 (1938), pp. 133–138.

187 See Chapter 5.4 and 5.5.

188 Burr, "The Code of Stephan Dušan", p. 530; Novaković, *Zakonik*, p. 143; *Zakonik cara Stefana Dušana*, vol. III, p. 274.

189 See S. Šarkić and T. Matović, "O izvršenju presuda u srednjovekovnom srpskom pravu" ["On the Execution of Rulings in Serbian Mediaeval Law"], in *Četrdeset godina izvršnog zakonodavstva u građanskim postupcima*, *Zbornik radova* (Belgrade 2018), pp. 7–18.

witnesses was a civil servant, called *vicarius*, appointed by judges, according to old customs.¹⁹⁰ The vicar sent a summons orally, as was described in chapter 388, speaking on the summons of a woman: if the vicar could not find a woman, he had to call her thunderously in the house where she lives, three times on different weekdays. If she did not appear before the court, she would be guilty of contumacy (*ordinamus, quod quotiescumque citari debuerit ad Curiam aliqua mulier in civitate, quae se a Vicario Communis no permiserit invenire, citetur ad domum suae habitationis alta voce, quatenus comparere debeat ad Curiam in termino sibi per Vicarium de mandato Iudicium assignato, tali personae, de iustitia responsura; qui terminus, sive termini in Iudicium discretione existant, personarum et negotiorum qualitatibus perpensis, et si dicta mulier tribus vicibus diversis diebus, ut praemittitur citata non comparuerit, procedatur contra ipsam, tamquam contumacem, secundum formam Statuti*). It seems that such a procedure was used for other litigants as well, not only for women.

A defendant was called in Kotor *obliquus*, while for a plaintiff there is no special term. The duty of a plaintiff was to appoint witnesses. Some persons could not appear before the court. For example, a son who was a minor, i.e. under paternal power.¹⁹¹ If a widow was summoned she could designate a representative to litigate for her. Married women could appear before a court in only two cases: if she was violently attacked or if someone took by force something of her movable property (*de verberatione et de violentia alicuius rei mobiles*).

The second stage of the trial was the examination of witnesses. The rule of Roman law *testis unus, testis nullus*,¹⁹² “one witness, no witness”, i.e. that a single witness or other evidence to an event is insufficient to establish that the event truly happened, was accepted in the Statute of Kotor, but only for cases inside the city; for lawsuits outside the city, one witness could be sufficient (Cap. 131: *Ordinamus, quod testimonium unius testis de cetero non valeat: quia vox unius, vox nullius, nisi esset extra Civitatem, tunc unus possit esse testis*).

The persons who could not testify were relatives, women, a cleric for a layman, and a mother for her sons and daughters (but a father could).¹⁹³ In cases of debts and other obligations, two witnesses were needed inside the city, and

190 Cap. 20: *Potestatem habeant soli iudices ad eorum voluntatem, secundum antiquam consuetudinem eligere, et ponere vicarium.*

191 Cap. 73: *Filius existens in potestate patris vocatus ad placitum nullo modo respondere teneatur.*

192 Sec. *Cod. Iust.* IV, 20, 9, the law promulgated in 334 AD by Emperor Constantine the Great.

193 See Cap. 127, *De iis qui repelluntur a testimonio*; Cap. 128, *De testimonio Clericorum non acceptando*; Cap. 129, *De testimonio patris, vel matris inter filios*; Cap. 130, *Quod mulier non possit esse testis.*

only one outside the city, but only for lawsuits to the value of 10 perpers.¹⁹⁴ A witness had to take an oath *ad sancta Dei Evangelia*. The examination of a witness consisted of a series of questions put to him by the judges for the purpose of bringing before the court the knowledge that the witness had. The witnesses would be examined on the place and time of the event, one by one and without contact (*postea eos divisim, unum post alterum interrogent, et etiam eos interrogent de loco et tempore*). If the statements of witnesses were discordant the testimony would be worthless (*si discordes eos invenerint, testimonium ipsorum pro nihilo habeatur*). If the witnesses declared that they did not remember the place and time, their testimony would still be worthy (*si autem ipsi testes, vel aliqui ex eis dicant se non recordari de loco, vel de tempore, testimonium ipsorum valeant*).¹⁹⁵

Documents or written evidence was as worthy as much as witnesses. In commercial relationships the principle *prior tempore potior iure* ("he who is first in time is preferred in right") was applied.¹⁹⁶

The Statute of Kotor provides for torture—to inflict intense pain to body or mind for the purposes of extracting a confession or information—in two cases: 1) if any Albanian, Slav or Vlach kills any citizen of Kotor, and there were no witnesses to prove the homicide;¹⁹⁷ and 2) if there is a presumption, but not evidence, that some person of bad manners has committed a larceny.¹⁹⁸

The Statute of Kotor mentions conjurators (*iuratores*) and jury (*porota*).¹⁹⁹ Conjurators had to be persons related by blood (*consaguineus*), but in the cases of property a son could not testify for his father, nor brother for brother.

Advocates—persons who assist, defend, or plead for another—had an important role in lawsuits.²⁰⁰ Kotor's advocates were not persons learned in the law. It was sufficient that they had knowledge of statutory provisions. The Stat-

194 Cap. 133, *De testibus in quantum sunt recipiendi*.

195 Cap. 132, *Qualiter testes recipi debeant*.

196 Cap. 292 (promulgated 1322), *De cartis Notariorum factis pro habenda iustitia ad aliam Curiam*.

197 Cap. 92, *De homicidiis: et si aliquis Albanensis, Sclavus, vel Vualachus interfecerit aliquem civem Catharensem, et testibus non potuerit probari, et aliqua fama, vel praesumptio de ipso esset, quod Comes, et Iudices habentes Deum prae oculis, possint ipsum Albanensem, Sclavum, vel Vualachum poni facere ad tormentum, prout eis visum fuerit, ut veritas cognoscatur, et Iustitia finiatur*.

198 Cap. 107, *De furtis factis in Civitate et districtu Cathari: si esset aliqua evidens praesumptio contra aliquam personam malae conditionis, et famae, si ipsum diffamatum Curia talis conditionis, et famae repererit, poni debeat ad tormentum, et torqueri prout Curiae videtur convenire, ut veritas cognoscatur*.

199 Cap. 351, *De Porrotis faciendis*, and Cap. 424, *De Consuetudinibus hominum de Gherbi*.

200 Cap. 6, *De electione Advocatorum Curiae*, and Cap. 29, *De sacramento Advocatorum*.

ute provides for four advocates elected by the citizens of Kotor. Any litigant could choose his advocate freely. It was prohibited to an advocate to refuse the defence of the party in a lawsuit, except if he was related with the litigant by blood. The advocate had to take an oath that he would be objective and that he would not abandon his client while the procedure was in progress. He would not demand higher reward than prescribed by law, and he would not instigate a litigant to commit perjury.

Judges had to first write a sentence and then to pronounce it. If a litigant, after three summons, refused to appear before a court, the judgment could be pronounced in contumacy (*in contumaciam*).

The right of appeal was introduced in Kotor in 1367, but only for cases to the value of more than 50 perpers. However, an appellate court did not exist in Kotor. The superior court to review the decisions of the city courts was the Papal Court in Rome or Board of Educated Lawyers in the Italian towns of Perugia, Padua and Bologna.

Chapter 65 of the Statute provides for judge-arbiters (*De Iudicibus Arbitris*), persons bound to decide according to the rules of law and equity. Arbiters were allowed only in lawsuits referring to immovable things (*super re stabili*). The plaintiff and defendant would choose two neutral persons, and a court would appoint the third. Arbiters rendered a decision after a hearing at which both parties had an opportunity to be heard. If the arbiters, summoned two or three times, did not accept their duty, other persons would be chosen. If the new arbiters refused to administer justice as well, the case would be presented before one of the existing courts. If the judge-arbiters rejected pronouncing a judgment, they had to pay six perpers to the Community of Kotor.²⁰¹

6.2 Budva

According to the Statute of Budva justice was administered by judges (*giudici*), arbiters and so-called *gastaldi*²⁰²—probably persons who tried lawsuits in guilds or fraternities.²⁰³ Beside litigants, or instead of them in trial procedure,

²⁰¹ Cap. 65: *et tam postulator, quam postulatus duas idoneas personas, quas sine odio esse cognoverint, communiter eligere teneantur, et tertium Curia dare teneatur, et coram illis electis Iudicibus lex definiatur, et si illi electi Iudices intrare noluerint, bis, et ter requisiti, eligantur alij Iudices. Quod si et illi alij electi intrare noluerint, tunc ad Curiam Iuratorum Iudicum revertere teneantur ... si inter eos iudicare noluerint, quilibet eorum Iudicum arbitrorum sex ypperperor Communitati solvere teneatur.*

²⁰² Cap. 109.

²⁰³ A guild was a voluntary association of persons pursuing the same trade, art, profession or business, such as printers, goldsmiths, artists, wool merchants, etc., united under a distinct organization of their own, analogous to that of a corporation, regulating the affairs of their

advocates were present.²⁰⁴ The Chancellor of the Commune, who took notes of proceedings, assisted the trial as well.

A person who brought a legal action against another was called in the Statute *quello che domanda, quello che si lamenta, and chi li lamentasse*;²⁰⁵ only Chapter 58 uses the term *accusador* for the plaintiff. A person against whom a legal action was brought was designated as *quello che vien domandado, persona che fosse dimandata, nostro cittadino che fosse dimandato*,²⁰⁶ and only in one case the defendant was named *accasonato*, i.e. accused (Cap. 110).

To appear before court it was necessary that a party posses mental capacity. Minor persons, the weak-minded, the deaf and similar had to be represented at court by their guardians. Chapter 205 explicitly orders that in case of children under age and without parents, judges must appoint one of their relatives as a tutor or representative, who could sue and reply in the court instead of them (*De tutor de fanti senza età: Ordinemo, che se fossero orfani de padre et madre senza età, li giudici siano trenuti a far un loro proninquo tutor o procurator, che possa per loro domander et responder alla corte*).

Parties to a lawsuit and witnesses were summoned by special Community officials called *senico* and *vataco*. Summons had to be sent to the litigants themselves, not to any member of their family. However, when any citizen of Budva was summoned before the Serbian Imperial Court, the summons was sent either with a seal (verbal summons) or with a writ of the court (*con lettera o con bola*).²⁰⁷ If a litigant did not appear before the court after the first summons, he had to pay 2 dinars to the court; if he did not appear after the second summons, the fine would be 4 dinars, and if he did not appear after the third summons, the sentence would be pronounced in contumacy.²⁰⁸

trade or buisness by their own laws and rules, and aiming, by cooperation and organization, to protect and promote the interests of their common vocation. In mediaeval history these fraternities or guilds played an important part in the government of some states, such as in Florence, in the thirteenth and following centuries, where they chose the council of government in the city. The word is said to be derived from the Anglo-Saxon *gild* or *geld*, a tax or tribute, because each member of the society was required to pay a tax towards its support. *Black's Law Dictionary*, p. 708.

204 Cap. 76, 84, 90, 108, 131, 233.

205 Cap. 30, 30, 39, 90.

206 Cap. 90, 92, 100, 101.

207 Cap. 3. Cf. article 62 of Dušan's Law Code.

208 Cap. 89, *De citar homo alla ragione: Ordinemo, che ciascuna persona si deve citar alla corte per il senico o per il vataco, et citar personalmente, et non dir in casa alla fameglia, et essendo cosi citado, non comparendo la prima volta, paghi danari 2 alla corte; et la seconda se non comparisse, paghi danari 4 alla corte; et se non venisse la terza, sia contumace di cosa, che può esser contumace.*

If a married woman whose husband was absent from the town was summoned, she had to appear before court personally, or to appoint any person (*responso legitimo*) who could make statements on a disputable case.²⁰⁹

The trial procedure started by the bringing of legal action and examination of litigants and witnesses. At court, nobody could make statements in the name of another; parties in a lawsuit or their advocates had to make statements on their own. Judges had to be objective and hear both sides, according to the rule *audiatur et altera pars*.²¹⁰ If it was proved that any judge or other official took bribes (*simonia*), they would be punished with a fine of 50 perpers (half of the fine went to the *Conte*, the other half to the Commune) and disqualification from holding offices. They also had to pay indemnity to the party in a lawsuit who lost the case because of their corruption.²¹¹

The burden of proof rested on both parties. As evidence, the Statute mentions confession of the opposite party, the statement of so-called legal witnesses (*testimoni legitimi*), notary deposition and documents with a seal.²¹² According to the statutory provisions, witnesses could not be persons under 14 years of age, close relatives of the defendant, servants, paupers whose property was valued at less than 10 perpers, blood enemies, godfathers, Serbs or Albanians, women, perjurers, traitors, or persons who had common property with the accused.²¹³ Witnesses had to take an oath before judges and litigants that they would speak the truth.

Judges were obliged to pronounce a sentence (*sententia, sentenza*) within 20 days after the end of the trial procedure.²¹⁴ The Chancellor was in charge to read a sentence to the present litigants, then to copy it on a separate sheet of paper (*in cedula*), and to deliver it to the notary.²¹⁵ The notary composed, within eight days, a special document called *carta di sententia*. This way the document became "perpetually firm and lawful" (*et sia perpetuamente ferma et credita*).²¹⁶

209 Cap. 99.

210 Cap. 87.

211 Cap. 93, *De simonia: Ordinemo, che se alcun giudice ricevesse simonia per alcuna questione, et li fosse provato, paghi per pena perperi 50, la metà al conte et la metà al commun, et mai piu possa haver officio del commun; et il danno, che havesse la parte, che perdesse la questione; e tanto dicemo del notaro e deglie altri ufficiali.*

212 Cap. 106.

213 Cap. 113.

214 Cap. 104, 121.

215 Cap. 80.

216 Cap. 74.

Chapter 109 confirms that the Statute of Budva accepted the principle of *non ultra petita* ("not beyond the request"), meaning that a court could not decide more than it had been asked to. In particular, the court could not award more to the winning party than it was requesting.²¹⁷

According to Chapter 243 of the Statute, an appeal could be taken only for lawsuits to the value of more than 30 perpers. Every citizen of Budva could complain of an error or injustice committed by a local tribunal and request a new judgment in Kotor, over a period of one year. If a sentence was reversed by an appellate court in Kotor, the other party had a right for reimbursment, and the appellant had a right for indemnity of all expenses that he had. The judges who had pronounced the sentence in that case had to pay a fine of 25 perpers.²¹⁸

Litigants could choose judge-arbiters, and they had to take an oath before the city judges and Chancellor. All decisions, sentences or settlements of dispute that they pronounced in accordance with the Statute were "perpetually firm and valid".²¹⁹

The Statute of Budva provides for compulsory payment of debt as the enforcement of legal process and creditor's remedie. To begin the process of compulsory payment it was necessary that judges pronounce a special decision, on the basis of a sentence that became definitive (*sentenzia deffinitiva*).²²⁰ After the acknowledgment of his debt, and after judgment was given against him, the debtor had eight days in which to pay. A debtor who could not pay had to contact official sellers and assessors who would, according to the Statute, appraise and sell as much of his property as was necessary to settle the debt. If he refused to do that, the judges were authorised to perform compulsory payment.²²¹

In connection with compulsory payment was another institution of trial procedure, called *attazzi*. Besides in the Statute of Budva, *attazzi* were men-

217 Cap. 109, *De sententia data per iudices, arbitri et gastaldi: Ordinemo, che se alcun homo havesse questione con altri avanti li iudici, gastaldi o arbitri di una cosa, et quelli dessero sententia di più d'una cosa, quella sententia non tenga ne vaglia.*

218 Cap. 243, *De appellacion de sentenzia: Ordinemo, che ogni nostro cittadino, al quale fosse data la sentenzia sopra esso de perperi 30 in suso, et lui si sentisse aggravato, che possi appellarsi a Cattaro per termine d'un'anno; et si la sentenza venisse revocata, che all'altra parte fosse satisfatto il danno, et la spesa a colui, che si adimanda; et le iudici, che furono in quel tempo, paghino de pena perperi 25.*

219 Cap. 74, *De arbitri: Ordinemo, che li arbitri se debbino trovar de voluntà delle parti per sacramento de fede in presentia delli iudici et del cancelliero; et cosi fatti, ciò che fosse per il detti arbitri fatto, giudicato, o concordemente fatto secondo il Statuto, sia perpetuamente fermo et rato.*

220 Cap. 267, *Di non metter debitor in cosa mobile.*

221 Cap. 268, *Se alcuno fosse sentenriato di alcun debito.*

tioned in the laws of Dubrovnik²²² and Kotor,²²³ but under different names—*aptagi*, *aptigi*, *aptagus*, *attaghi* or *attagi*.²²⁴

Chapter 97 of the Statute of Budva prescribes that in the case of a defendant's absence, a court would charge the plaintiff with a special tax called *attazzi* and give him possession of the required thing (*meter l'altra parte nella possessione che cerca, levando li attazzi la corte*), if a dispute concerns any law of things; on the issue of obligations the plaintiff would enter into possession of the property of the defendant.²²⁵

The Staute of Budva mentions the institution of the jury (*porotta*), but only in cases when a foreigner sued any citizen of Budva to the Serbian Tsar (*avanti la Signoria*). Then a jury had to be organized between the defendant's fellow-townsmen, except in the case when a person had a bad reputation. The duty of jurors was to swear that they believe in the oath of the accused person, i.e. to acquit on oath and release somebody from accusation. If any citizen of Budva refused to swear for his fellow-townsmen, he would have to pay all charges that the accused person had to pay.²²⁶ It is clear that jurors in Budva were conjurators, as was the case in Serbia.

6.3 *Novo Brdo*

The Law of Mines does not contain systematic provisions on trial procedure, only scattered information of two types of evidence: documents and testimony.

Written documents were the most important evidence, and records of them were kept by a special official called *urbarar* (*urbararius*). This is clear from articles 7, 13, 14, 16, 27, 29, 37 and XXI.

Testimony was mentioned in several article (8, 15, 17, 29, 37, XXI), but it is not clear whether it was only the oral statement of witnesses or evidence derived

222 On *aptagi* in Dubrovnik, see I. Puhan, "Aptagi dubrovačkog prava" ["Aptagi in the Law of Dubrovnik"], *Istorijsko-pravni zbornik* 3–4 (1950), pp. 200–214, and J. Danilović, "O pravnoj prirodi i razvoju ustanove Aptagi dubrovačkog prava" ["On the Legal Concept and Development of the Institute Aptagi in Ragusan Law"], *IČ* 12–13 (1963), pp. 31–90.

223 On *aptagi* in Kotor see Sindik, *Komunalno uređenje Kotora*, pp. 109–110.

224 *Lexicon latinitatis medii aevi Iugoslaviae*, vol. 1 (Zagreb 1969), p. 33 (article "aptagi").

225 For more details on *attazzi* in Budva, see Bujuklić, *Pravno uređenje srednjovekovne budvanske komune*, pp. 252–256.

226 Cap. 264, *De adimandar forestier o cittadino: Statuimo, che se alcun forestier dimandasse alcun nostro cittadino avanti la Signoria, per il qual cittadino fosse posta porotta di nostri cittadini, li quali nostri cittadini siano tenuti di giurar per il nostro cittadino in tal modo, che il nostro cittadino sia libero della questione, che fosse dimandato per il forestier. Et se alcun nostro cittadino non volesse giurar per il nostro cittadino per deliberarlo, che sia tenuto pagarli tutto il danno et le spese, che havesse fatto il nostro cittadino per causa del forestier, eccetto però se fosse di mala fama, per il qual non sia tenuto di giurar più.*

from writings. Article 15 simply orders that “everyone has to be believed for testimony” (свакы да ѣ вѣрованъ за свѣдож’бою).²²⁷

6.4 *Towns Conquered from Byzantium*

Trial procedure in towns conquered from Byzantium was similar to those in the Serbian part of the Empire. Litigants (plaintiff and defendant), summons, evidence, jury, pronouncement and execution of judgments were regular parts of trial procedure, as was the case in the “Serbian lands”. This can be seen from surviving minutes (memoranda or notes of a proceeding) of the Serres’ city-court and the court of Protaton (Πρωτάτων), the central administration of Mount Athos.²²⁸

²²⁷ Ed. Radojčić, p. 41.

²²⁸ Some cases were examined by Živojinović, “Sudstvo u grčkim oblastima srpskog carstva”, pp. 238–246.

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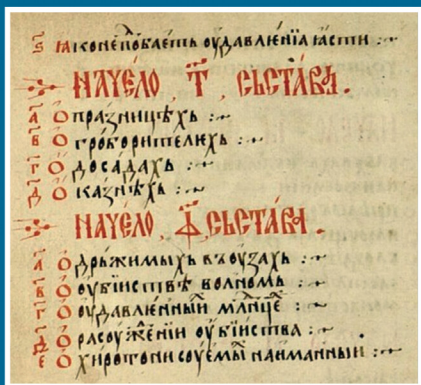
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This book explores the complete history of Serbian law in the Middle Ages, covering the 12th to the 15th centuries, which until now has been largely unstudied in international scholarship.

Firmly rooted in primary source research and showing strong awareness of the contemporary historical context, this comprehensive study examines different types of law – such as criminal law, constitutional law, and civil law – and the various legal systems and procedures in place during this time, offering a valuable synthesis while also presenting new views and novel interpretations of Serbian legal history.